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THE PROGRESS OF FEDERAL RAILWAY REGULATION.

THE Interstate Commerce Act, originally regarded even by its friends as a legislative experiment, has remained for nine years without any fundamental or very material modification. This period is unquestionably long enough to permit the formation of an accurate empirical judgment regarding the efficiency of the law and to justify the entire substitution of the practical results of experience for merely theoretical discussion of its merits.

Before entering upon such a discussion it is indispensable to ascertain and precisely define the evils that the law was intended to correct and the remedies it provided. The first three sections, which have been considered merely declaratory of well-recognized principles of the common law, prohibit not only excessive charges for railway service, but also charges so adjusted with reference to other charges as to subject any person, locality or class of traffic to unreasonable or unjust prejudice or disadvantage; while the fourth section adds a rule of evidence in connection with complaints arising under the third, by imposing upon the carrier making a greater charge for a shorter intermediate carriage of persons or property than for a longer one in the same direction, the burden of sustaining the justice of the discrimination by proving the existence of circumstances and conditions substantially dissimilar. The infer-

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ence is reasonable and inevitable that the evils which attracted the attention of Congress and against which it intended to legislate were those of excessive and relatively unreasonable or unjustly discriminating charges.

A careful analysis of the act shows that Congress attempted to provide three remedies, each of which separately and independently had been advocated as a satisfactory solution of the problem of railway rates by persons holding the most divergent views. These remedies were: (*a*) a summary process for hearing and adjudicating complaints against railways and for enforcing without delay the measures of relief found necessary; (*b*) the perpetuation of competition; and (*c*) publicity for the details of railway management, operation and finances.

The failure of the first remedy was immediate and complete. The United States courts, to which appeal must be made for decrees enforcing the orders of the Interstate Commerce Commission, promptly declared that the law gave no finality to the acts or conclusions of that body; and in proceedings upon applications by the commission for the enforcement of its orders, defendant railways were permitted to introduce entirely new evidence and to adopt new lines of defense. Obviously this construction of the statute deprives procedure before the commission of any efficacy in simplifying or expediting measures for relief from railway oppression, except in those cases in which the railways see fit to comply voluntarily with its orders.[1] In other words, the investigation of complaints

[1] The following from the latest report of the Interstate Commerce Commission is of interest in this connection: "In the case of The James & Mayer Buggy Company *vs.* The Cincinnati, New Orleans and Texas Pacific Railway Company *et al.* (the Social Circle case), which involves the most vital principles of the act, the commission rendered its decision in 1891, and filed a petition for the enforcement of its order in the United States circuit court for the northern district of Georgia on the 21st of October, 1891. Four years have since elapsed, and this case is pending in the Supreme Court. Numerous cases in the lower courts wait upon the decision of this case, and are continued from time to time to avoid the expense of litigation. In the case of Coxe Bros. & Co. *vs.* The Lehigh Valley Railroad Company, the commission, after a thorough and painstaking investigation, decided that there should be a substantial reduction in the transportation charges on coal from the anthracite region of Pennsylvania to tide-water at New York. On May 21, 1891, the commission filed a petition in the United States circuit court for the

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which is provided for by the law, together with the reports, opinions and orders based thereon, have no practical effect other than to give publicity to whatever ground for complaint may be found to exist; and the orders of the commission are only complied with in cases of little importance, or when based upon facts and reasoning so clear, unmistakable and convincing that the railways are unwilling to awaken the public sentiment of condemnation that they feel will be certain to follow non-compliance.

The fifth section of the act attempts to perpetuate competition by making it illegal for any carrier operating over a rail or rail-and-water route to enter into any combination or agreement with other carriers for the pooling of freights or the division of all or any portion of the gross or net earnings from competitive traffic. As no one has ever contended that the suppression of railway competition, which is the sole end and purpose of so-called pooling contracts, tends to produce unjust discriminations between either persons, places or classes of traffic, it may be taken for granted that this section was added because it was believed to be a safeguard against extortionate charges. Though the insertion of this provision is now generally considered to have been a serious mistake, and its operation an almost insurmountable obstacle to the satisfactory enforcement of the fundamental principles of the law, it is not denied that it has been observed with practical uniformity. The occasional evasions which have occurred have required very complicated machinery and have been wholly dependent for their success upon the good faith of the parties; and the service to self-interest from secret violations has been so evident that the periods of their continuance have been too short to have any material effect upon revenues or upon the general condition of railway business.

In the third remedy Congress evidently intended to provide for the broadest and most comprehensive exercise of the visi-

eastern district of Pennsylvania to enforce its order of reduction, and after more than four years the case stands on the docket of the said circuit court untried." — Ninth Annual Report, I. C. C. p. 10.

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torial function of government. It authorized and required the Interstate Commerce Commission to inquire, generally, into the business of the carriers subject to its jurisdiction, and to keep itself continually informed as to the manner and methods of conducting their business, and it provided for full investigations and reports concerning all complaints against such carriers. The provision for annual statistical reports, though unfortunately limited by interpretation to a much more restricted class of corporations than its terms would seem to justify, has proved one of the most useful requirements of the statute, and has resulted in the collection of a body of numerical facts relating to the business of railway transportation in the United States that is more accurately and completely descriptive of that business than the statistics that are available in any other country or for any other important industry at home or abroad. Other provisions, intended to assist in securing the same result, authorize the commission to prescribe a uniform system of accounts; require all carriers subject to the act to print, file and conspicuously post copies of their rate schedules, and to file copies of all agreements with other common carriers concerning traffic subject to the act; and give the commission power to issue subpœnas and subpœnas *duces tecum*. Through these requirements the public and its legislative agents have had opportunity to become acquainted with those essentials of railway management that most materially affect the relations between the carrying corporations and their patrons.

These observations indicate the points that an investigation of the results of the Interstate Commerce Law should attempt to elucidate. Non-essentials should not be allowed to lead into relatively unprofitable though alluring by-paths. It is more important to discover whether the evils that the statute was intended to correct still continue — whether there are now frequent instances of excessive charges, or whether particular persons, places or kinds of property now suffer from unjustly discriminating charges, than whether the particular remedies selected have been uniformly observed — whether there have been occasional evasions of the anti-pooling section or instances

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of higher charges for shorter than for longer carriage of persons or property such as are forbidden in the fourth section.

What is an excessive charge for railway service? What is the criterion by which a rate can be measured, and the question whether it is in itself just and reasonable correctly answered? It cannot be any definite sum per passenger or per ton of freight per mile; for any standard of this kind either would be so low as almost immediately to reduce all companies to bankruptcy, if applied to all traffic, or would be so high as inevitably and at once to prevent the movement of many commodities of great weight in proportion to their value, the trade in which is now socially necessary and profitable. It cannot be what the service is worth, or, differently stated, the money equivalent of the utility added to the commodity by its transportation from a region of abundance to one of scarcity; because this utility is in itself mainly dependent upon the cost of transportation between the localities, and consequently to adopt it as a standard would be to travel in a vicious and unprofitable circle.

By some it is most plausibly contended that cost of service, since it may not reasonably be exceeded by more than a limited percentage in the price exacted for the service, can, with the addition of a reasonable allowance for return to capital, be made to serve as a standard by which rates may be judged. It might be difficult to combat this contention, were it possible even approximately to determine the cost of any particular service. But this is impossible; for most of the items that make up the total cost of railway service are incurred on the joint account of many shipments, and not in order especially to facilitate the movement of any particular shipment or even any particular portion of the aggregate traffic. The cost of moving a bushel of wheat from Minneapolis to New York *via* Chicago includes, among other things, a portion of the outlay for maintaining yards and terminals at Minneapolis, Chicago and Jersey City; for wages of trackmen along the entire route; for telegraphs and signaling apparatus; for keeping bridges, culverts and trestles in repair; for the fuel and oil consumed by the locomotives employed during the run; for clerical work in the

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general offices of each company whose line is traversed; and for taxes paid to the states of Minnesota, Wisconsin, Illinois, Indiana, Ohio, Pennsylvania, New York and New Jersey. It is obviously impossible to assign to any particular shipment a definite proportion of these expenses, and successfully to maintain that neither more nor less than that proportion was incurred solely in order to effect the transportation of that identical shipment. Even the distribution of such items of cost as maintenance of road bed between passenger and freight traffic can be accomplished only in a wholly arbitrary manner. All that is possible on the basis of cost is to determine the aggregate amount necessary to carry on transportation of all kinds over a particular line; and when to this is added a reasonable allowance for return to capital, the total is the maximum which the corporation owning that line may fairly receive as its revenue from operation. A greater revenue is unreasonable and excessive, though in the adjustment of the charges from which it is derived some of them may be too low.

If a railway carried only a single commodity in uniform quantities, and always between the same points in the same direction, it would be possible to determine whether, measured by the cost of service, the rate charged was fair and reasonable; but the moment this condition is disturbed by the acceptance of other traffic, for instance, a return load for the cars already employed, it becomes impossible to consider the justice of the rate continuously enforced on the former traffic without reference to the charges applied to, and the revenue derived from, the new business. For example, take the case of a road one hundred miles in length between the points *A* and *B* engaged solely in carrying lumber from the first to the second of those points, all cars returning empty to *A* for reloading. Suppose the cost of the road to have been $1,000,000 and its capitalization to be the same amount, divided equally between stock and bonds. Now if the operating expenses and taxes are $50,000, and five per cent is a reasonable return to capital, a freight rate fair and reasonable alike to the public and the railway should produce a gross revenue of $100,000. A higher revenue would

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indicate an excessive rate, and a lower one would be unjust to the owners of the line. If the total traffic amounted to 50,000 net tons per annum, ten cents per one hundred pounds, or two cents per ton, per mile, would be a reasonable and just rate. If during the continuance of these conditions it became practicable to obtain a return load for the cars employed in moving lumber, — say flour to the amount of 10,000 tons per annum, — no increase would be necessary in many of the items of operating expenses, and but little in any of them. If ten cents per one hundred pounds is a fair rate for moving flour from *B* to *A*, the revenue from the new traffic would amount to $20,000. Estimating the increase in operating expenses incident to the new traffic at $5,000, there would be an increase of $15,000 in the revenue available for return to capital. But as five per cent is a reasonable return, this increased amount, equivalent to six and one-half per cent, must be excessive. Hence the rate on lumber that was formerly fair and reasonable (we have supposed the new rate on flour to be just) is now unreasonably high. As the road may not justly earn more than $50,000 per annum above operating expenses and taxes, the rates on lumber should be reduced to a sum which will produce but $85,000, or to eight and one-half cents per one hundred pounds. Of course in practice no railway operates under the simple conditions described, and the determination of the proper relation between different rates in the carrier's schedule is much more complicated.

The conclusion is evident that, in the present complex condition of the railway industry, all that can properly be predicated of the rate charged for the transportation of any shipment is that it is just or unjust, reasonable or unreasonable, relatively to other rates. A rate is relatively unreasonable when in the general competition it puts any person, place or commodity at a disadvantage that is not based upon a substantial difference in the governing circumstances and conditions. Discussion of the results of the Interstate Commerce Law should, therefore, be confined to the question whether the relative adjustment of railway charges is now generally fair to individuals, commodities and localities.

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It will not be necessary to encumber the discussion with an attempt to formulate theoretical rules by which to determine whether any particular rate is relatively just and reasonable. As a matter of fact, many of the discriminations that now exist are so manifestly unjust, so clearly arbitrary, and do so unquestionably subject persons, places and kinds of property to unreasonable prejudice and disadvantage, that their mere citation is conclusive of all controversy.

As has been indicated, rates may be relatively unjust: (*a*) when differences are based upon the individuals for whom service is performed; (*b*) when rates upon different commodities are adjusted for the purpose or with the effect of fostering the movement of one at the expense of the other to an extent greater than is warranted by differences appertaining to the commodities themselves; and (*c*) when differences between rates to or from competing localities are such as unduly to favor the products or industries of a particular town, city or district.

Unjust discriminations between individuals located at the same place are those that are most readily observed by and consequently most obnoxious to the general public, though it is extremely doubtful whether their consequences approximate in gravity the serious and deplorable effects of those that fall within the second and third classes. That it is unjust to charge *A* sixty dollars for the transportation of a carload of wheat from Chicago to New York, while at the same time *B* is charged but fifty-five dollars for the same service, is apparent; and no one can doubt that, if persisted in, the discrimination will eventually destroy *A*'s business. That it would, at the same time, be even more unjust and disastrous to charge *C* seventy-five dollars for moving a carload of flour over the same route, or *D* ninety dollars for taking a carload of wheat from St. Louis to New York, is susceptible of demonstration, but is by no means equally apparent to the superficial observer. Between discriminations of the first class and those of the other two there is a fundamental distinction which affects materially their treatment under the law. Unjust discriminations between individuals can be effected only by means of

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secret deviations from the published rate schedules, while those between producers of different commodities or between localities appear on the face of tariffs and classifications. The secret rates, rebates, drawbacks, allowances or other illegal devices resorted to in order to accomplish the first kind of discrimination are punishable by fine or imprisonment; the only remedies for the other kinds are modification of the rate schedules or classifications and monetary recompense for the damage suffered.

Prior to the enactment of the Interstate Commerce Law so common was the practice of granting special rates to particular shippers that instances in which full published rates were charged have been declared by a high authority[1] to have been the exception rather than the rule. Where the traffic was of great importance and the competition between rival roads exceptionally strenuous, each railway has been known to select a particular shipper with whom arrangements for reciprocal favors were made. By means of such an arrangement a single firm was able practically to control for a considerable period all shipments of corn over a great trunk railway and to one of the principal ports from which that cereal is forwarded to foreign countries. The number of discriminations of this kind is known to have been materially reduced in consequence of the operation of the Interstate Commerce Law. They continue, however, to be one of the most effective weapons in competition for traffic between particular points, and will be an important factor in the railway situation as long as competition is a controlling element in rate-making. It is not even certain that they are not more harmful now than when more common; and it may be found that their baneful effects are accentuated by the fact that instead of being made, as formerly, for nearly every applicant, concessions from established rates are now granted only to powerful traders who are able to control vast shipments, and to traffic that yields a revenue that is of almost vital importance to the carrying companies. That

[1] Mr. C. C. McCain, in his report to the committee on finance, of the United States Senate. See Senate Report No. 1394, Fifty-second Congress, second session, Part I, p. 433.

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such discriminations were a principal factor in the development of the petroleum monopoly, is generally understood. How far other great monopolies, such as those controlling beef and pork products and the sugar supply, have been so favored, is problematic, though their ability successfully to demand such aid is undoubted.

Unjust discriminations prejudicial to particular commodities have not been greatly diminished by the operation of the Interstate Commerce Law. They are announced boldly in freight classifications and rate schedules, and the burden of proof is generally upon those who allege that they are unjust. Numerous cases of this kind have been heard and decided by the Interstate Commerce Commission; and in a few instances in which the commission has directed the modification of the obnoxious charges and the promulgation of others relatively reasonable, substantial compliance upon the part of carriers has ensued. A case decided by the commission during 1891 affords an example of a discrimination of this kind which might, if continued, have destroyed an important industry in one of our chief cities.[1] The rate on live hogs from Chicago to Boston previous to June, 1887, was about forty-six per cent of the rate on dressed hogs slaughtered at the former city. Under these rates both commodities moved in considerable quantities, and the business of killing and dressing pork was profitably conducted in both cities. During 1887 and 1888 this situation was disturbed by successive changes in the rates on dressed hogs, without corresponding alterations in those on the live animals, and from July 14 to August 19, 1888, the cost of moving the latter stood at 135 per cent of the charge for the former. The inevitable effect upon the business of slaughtering at Boston is sufficiently obvious. The Interstate Commerce Commission, in response to complaints brought before it, has found it necessary to prescribe the proper relations between rates on such pairs of commodities as the following: common soap and pearline, dried fruits and raisins, lumber and hub blocks, lumber and railroad ties, wheat and flour, corn and

[1] Squire & Co. *vs.* Michigan Central Railroad, Fourth I. C. C. Report, p. 611.

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its products, grain and grain products, celery and green vegetables, window shades and hollands, petroleum oil and its products. The paramount difficulty involved in any attempt upon the part of public authorities to deal with this kind of discrimination is that the cases arise almost invariably from the classification of freight, which is itself a matter of agreement between all of the railways operating in a large territory. Complaints are made, however, in regard to specific rates resulting from such classification and against those lines only over which a shipment at the obnoxious rate would pass. It is seldom practicable to cause all those interested in the classification to appear as parties defendant; yet unless this is done, their voluntary compliance with the final order is all that can make it effective. As a direct and by no means unnatural consequence of this fact, many most serious discriminations of this class are never brought to public attention and remain unremedied.

The most important, far-reaching and deplorable results spring from that class of unjust discriminations which have for their victims not merely individuals residing at the same place or producing different but competing commodities, but the entire population of towns, cities and even extensive districts, which are made to suffer unfair disadvantage from the relative adjustment of railway charges. Practically the whole region south of the Potomac and Ohio, and east of the Mississippi, has continuously suffered from discriminations of this kind, through the system of making charges to a few selected cities the basis for through rates to all other points. Through rates are made to and from about two hundred of the larger towns, including Atlanta, Birmingham, Chattanooga, Meridian, Vicksburg, New Orleans and Mobile, and traffic shipped from or to all other points is charged the rate to one of these basing points plus the local rate from such basing point to final destination. In practice it is common to make the combination by the use of rates to and beyond whatever basing point will show the lowest total, whether on the line traversed by the shipment or not. Thus a shipment from Cincinnati to a point on the line from that city to New Orleans,

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and located near the latter, would be charged the rate to New Orleans plus that from New Orleans to the local point. The efforts and influence of the Interstate Commerce Commission have secured a substantial reduction of these discriminations against the smaller towns of the South, and along the main lines of the more important roads some of the grosser disparities resulting from this system of rate-making have been abolished; yet the system is still in full force over most lines.

The condemnation of such a system cannot be too severe.[1] It not only limits the commercial activities of the towns unjustly discriminated against and restricts the sources from which they can draw supplies, but by hindering their growth it retards the development of the entire section in which such discriminations are common. This reflex influence includes in its baneful con-

[1] The following reference to a case involving this system of rate-making is from the Ninth Annual Report of the Interstate Commerce Commission, p. 29. "The complainants, Hill & Bro., do a wholesale grain, flour and hay business at Cordele, Ga. (not a basing point), in competition with dealers at the cities of Albany, Americus and Macon, which are basing points and therefore enjoy rates lower than those to Cordele from common sources of supply. The Commission said in this case: 'If, as defendants claim, competitive conditions, existing among themselves and other members of the Southern Railway and Steamship Association, authorize them to select basing points and distributing centers and to give them lower or preferential rates, upon what ground are Macon, Americus and Albany so favored while this advantage is denied to Cordele? It can be and is reached from Nashville over various competing lines, formed in connection with two initial and two terminal lines; it has convenient rail communication east, west, north and south; it is less distant by rail from the coast than Americus, Macon and Albany, and is arbitrarily excluded from the advantages given to its rivals and business competitors. The general freight and passenger agent of one of the defendant companies, a witness called by them in support of the higher rates to Cordele, testified that Macon, Americus and Albany were competitive points and Cordele was not, for the reason that it is not a distributing point to the extent that the other places are; that if competitive forces were allowed to operate at Cordele so as to give it lower rates, its business would increase to some extent and thus make it more of a distributing point. Testimony for complainants is that the increase of business to result from reduced rates would be large. We have, then, this state of case. Cordele is not treated by the defendant roads as a competitive point because it is not a sufficiently large distributing point, and it is not such a distributing point because it is not treated as a competitive point, and the defendants seek to excuse themselves from wrong-doing by offering the results of the wrong in justification. Tried by its results, this system of rate-making is at variance with all the equality provisions of the act to regulate commerce, including that which requires all rates to be reasonable and just.'"

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sequences the very cities that are supposed to be favored, and by dwarfing the prosperity of the territory contiguous to their lines depletes the revenues of the railways themselves. Rates to New York City from all cities and towns in the southern peninsula of Michigan, in Illinois, Indiana, Ohio and the portions of New York and Pennsylvania west of Buffalo and Pittsburg are certain fixed percentages of those from Chicago. Thus the rate on any given commodity from Cincinnati to New York is eighty-seven per cent of what it would be if the shipment originated at Chicago; from Detroit, seventy-eight per cent; from Cleveland, seventy-one per cent; from Indianapolis, ninety-three per cent; and from East St. Louis, one hundred and sixteen per cent. Rates to Boston are higher and to Baltimore and Philadelphia lower, by certain arbitrary amounts varying according to the different classes, than those to New York from the same points. The percentage of the Chicago-New York rate to be applied from each competitive point is fixed by agreement between the roads concerned, while each road is left at liberty to adjust to its own satisfaction the charges from and to points strictly local to its own line. Naturally the course commonly adopted since the fourth section of the Interstate Commerce Law has prohibited higher charges for intermediate hauls has been to make rates from local points the same as from the nearest competitive point on the through line on which they are situated. It thus frequently happens that a competitive-point rate will apply from local points which are very much nearer the common destination.

Whether such an arrangement can in any case constitute an unjust discrimination, and whether a rate that is fair and reasonable for a distance of, say, 800 miles is not clearly excessive for one of 750 miles in the same direction over the same line, is a delicate inquiry that it will fortunately be unnecessary to undertake in this connection. But it is desirable to point out a result of this system which is due to the fact that frequently a north and south line will have two or more connections over which traffic between its local stations and the seaboard may be carried. Whenever this condition exists,

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it is clear that traffic between the seaboard and any one of the points of junction with such connections may be carried *through* any other of those points. Not infrequently each of such junction-points has been accorded a different relation to the basic rates, and in such cases the transportation of freight through the point having the higher percentage to or from the point having the lower results in a violation of the general rule laid down in the fourth section of the Interstate Commerce Law. It has been intimated that this is not necessarily conclusive evidence of an unjust discrimination; but where there is competition neither from carriers operating over water routes nor from foreign railways not subject to the restraints of the law, — where, in fact, the dissimilar conditions are created by the railway system (though not by any particular railway), the rule of evidence prescribed in the long-and-short-haul clause is satisfactory and conclusive. It may not be at present either possible or advisable to correct in all cases the discriminations so made; and *under existing conditions* there may be rare and peculiar instances in which lower rates to more distant than to intermediate points are justified, so far as the line actually making them is concerned, by the competition of railways subject to the act; but the circumstance is none the less unfortunate and harmful, and the aim of railway regulation must not be allowed to fall short of a complete remedy.

The manner in which competition at points served by two or more railways affects those having but one has received general recognition, and is one of the most powerful causes of the too rapid construction of railways that has burdened the country with many unnecessary, unprofitable and bankrupt lines. To attempt to regulate these cases by the process of taking them up singly and prescribing the alterations necessary in order to make the charges relatively reasonable, is a task scarcely less impracticable and hopeless than that of emptying the Atlantic with a teaspoon. Though the relief afforded to particular places through the orders of the Interstate Commerce Commission has often been of great local importance, a large number of its decrees, including those most important, have

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been entirely ignored or are now awaiting enforcement through the tedious processes of the courts. Even had the commission itself the authority of a United States court, and were there no appeal from its decisions, the town with two railways would still have an immense advantage over that with one. In the case of the Eau Claire Board of Trade,[1] decided by the commission during 1892, it was contended by the complainants that the rates charged on lumber shipped from Eau Claire, Wisconsin, to points on the Missouri River were so high relatively to those on shipments from points competing for the business of supplying the same markets, as practically to destroy the business of Eau Claire. Only a few of the roads serving these competing points reached Eau Claire, and according to the view of the law adopted by the commission roads operating from competing sources of supply could not be said to discriminate against a point from which they did not and could not carry traffic. The only action available in order to remedy the injustice under which it was found that Eau Claire was suffering was to order a reduction from that point, and in announcing its conclusion the commission said :

> Undoubtedly those roads [referring to those not reaching Eau Claire and consequently not included in the order] have it in their power to continue the present disparity, but we do not anticipate, and certainly cannot assume, that they will resort to such inconsiderate and arbitrary action in order to nullify the lawful order of this commission.

The compliance of the defendant railway with the order of the commission was, however, almost immediately nullified by the action upon the part of the other railways which that body had most properly refused to anticipate, and the rates of all lines were ultimately restored to practically the figures in effect previous to the decision.

The conditions described are fairly typical of those existing all over the United States. The Interstate Commerce Law has mitigated but slightly, if at all, the evil of unjust discriminations between individuals ; has in but few instances moderated to any

[1] Fifth I. C. C. Report, p. 264.

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important extent the relative injustice in the charges exacted for moving competing commodities; and has almost utterly failed to remedy the far more serious inequities in rate-making which operate to the disadvantage of towns, cities or districts. The practical acquiescence of the Interstate Commerce Commission in this conclusion may reasonably be inferred from the following extract from its latest annual report:

> It is believed, as was further indicated in our last report, that the discussion of the principles and aims of the statute may well give place, temporarily, to a consideration of the means necessary to make effective and give force to the law in accordance with the purpose of its enactment. The experience and observations of the past year, in which the progress of regulation has not been entirely satisfactory, warrant the conclusion that with the official proceedings and transactions of the year relating to the operations of the law we should report as a matter of first importance and recommend the additional legislation deemed indispensable to give effect to the act in accordance with its purpose, as declared in the first three sections thereof. . . . The importance of amending the present law cannot be stated with too much emphasis. . . . It certainly cannot be believed that Congress, having once assumed to exercise a measure of control over railway carriers, will allow that control to become ineffectual by withholding the legislation found necessary to secure the results expected.[1]

The report proceeds to enumerate the particulars in which, in the opinion of the commission, the statute is chiefly defective, and to suggest remedial legislation. The purpose of the amendments recommended is declared to be merely to "give to the statute the degree of completeness and effectiveness which it was designed to have, and to provide the means whereby its purposes can be fairly accomplished"; and this statement seems fully supported by an examination of the amendments themselves. They are mostly intended to obviate the difficulties now encountered in efforts to secure testimony regarding violations of the law, and to give a satisfactory degree of finality to the proceedings before the commission.

If all that is necessary in order to secure thorough and satisfactory supervision of railway transportation is to reinforce the

[1] Ninth Annual Report, pp. 5–11.

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law by adopting the amendments suggested by the commission or by otherwise perfecting the remedies already provided, the situation is comparatively simple, and adequate and early relief may reasonably be anticipated. That the commission itself does not take such a superficial and complacent view, is apparent from the careful qualifications with which its proposed amendments are submitted.[1] The modifications recommended relate solely to the enforcement of the remedies already provided, and the language used by no means amounts to an expression of confidence that those remedies, even if applied with the utmost rigor, would prove effectual. It is much to be doubted whether any member of the commission or any other careful observer believes that they would. The inadequacy of these remedies is evident as soon as the real cause of the evils is understood. No writer making use of the English language has more clearly and concisely stated the conditions governing the business of railway transportation than the Hon. Thomas M. Cooley, formerly chairman of the Interstate Commerce Commission; and nowhere has the exact nature of the real railway problem been so happily and accurately expressed as in his opening address to the third annual convention of railroad commissioners. Among other things, he said:

> When the number of railroads which are now merely subsidiary to other and stronger lines, either through being brought into the same interest or from being leased or otherwise effectually controlled, are left out of account, there are something like five hundred in this country still remaining whose boards have the power to make rates for the carriage of passengers and property. These boards are by the law left to exercise in the first instance what is practically a free and unlimited authority in the making of rate sheets. They may make them high or low, just or unreasonably discriminating as between persons and property, or different classes of property, or between different centers of trade, at pleasure. . . . It was at first thought by

[1] "Those who have given most reflection to the subject of government regulation are aware that the laws now in force are more or less tentative and experimental, and such persons anticipate that the evolution of railway control by public agencies will sooner or later result in a more comprehensive and direct exercise of the power possessed by Congress to regulate our internal commerce."— Ninth Annual Report, Interstate Commerce Commission, p. 11.

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those who made the laws for the building and management of roads that to leave the authority thus unrestricted was the best possible condition of things, that it would lead to active competition in rates, of which the general public would have the benefit; that the competition would as a matter of course force the rates down to a reasonable point; in short, that the competition would act precisely as it does in other lines of business. Experience has shown that this idea of railroad competition is a mistaken one, that it cannot be compared with competition in the channels of commerce in general, that there are no such tests of the value of railroad service as can fix the limit down to which a road may go without inevitable loss upon its business as an aggregate, that it may carry some classes of its business at impolitic if not in fact at losing rates, and yet make profits upon its whole operations by charging to other classes of its business rates which may perhaps seem excessive and yet cannot clearly be shown to be so because of the absolute impossibility of making distinct apportionment between the cost of service rendered to one class and that rendered to the other. . . . But so inextricably are the railroads of the country intermingled in interest, in so many ways do they form routes from business center to business center, from the Lakes to the Gulf and from ocean to ocean, so easy is it for almost any seemingly unimportant road to be made a part of some direct or indirect route which shall constitute a great channel of commerce, that any considerable change in the rate sheets by any one of these five hundred boards is not only likely to affect the business and the rate sheets of the roads which are its immediate rivals, but to reach out also in its influence from road to road in all directions, not over small neighborhoods, but from state to state, until what seemed to be the action, and was perhaps the hasty and reckless action, of a mere local board may become almost of continental importance. . . . This then is the railroad problem. There are mischiefs in railroad service that are outside of it, but we distinctly indicate the main source of difficulty when we place our finger upon the power as it exists now to make and unmake the rates for passenger and freight transportation.

It would be difficult indeed to formulate a more forcible statement of the fact that in the real and imaginary conflict of interests between the various corporate units that make up the American railway system lies the prime obstacle to successful regulation, and that so long as this conflict continues, the evil of unjustly discriminating rates will be its constant accompaniment.

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The unreasonable rate not made either to secure competitive traffic or to recoup losses from carrying such traffic at too low rates is so extremely rare that its very existence may well be doubted. Unjust discriminations between individuals are resorted to in order to secure by means of secret rates, rebates or other devices a greater proportion of the traffic from or to competitive points than would be carried at open and equal rates. Discriminations between commodities result most frequently from favoring articles produced by heavy shippers or in towns at which competition is sharp, or from the fact that the railways agreeing to a particular classification have not a sufficient identity of interest to make naturally for harmony and justice. Localities either are favored unduly because they are served by competing lines, or are discriminated against in order that low rates may be maintained at other points more fortunate in this respect. The charges to local points on main and branch lines are too high relatively to those at terminals where there is competition; yet it cannot be denied that so long as the carriers are independent of each other in the matter of revenue there will be many plausible arguments available for the defense of these relations. The difficulty of dealing with such discriminations is greatly enhanced by the insufficient information upon which it is necessary to decide regarding the reasonableness of rates under present conditions. Thus in determining whether a given rate on wheat from Chicago to New York is reasonable and just it may be necessary to consider the rates on the same article to Buffalo, New York, Philadelphia, Baltimore, Boston, Montreal, Newport News and other eastern points not only from Chicago, but also from Minneapolis, Duluth, East St. Louis, Peoria, Cincinnati, Buffalo and other places. Rates on flour, corn and corn meal between any of those points may also be involved; and possibly the charges on any of the commodities named from St. Paul or St. Louis to New Orleans *via* the Mississippi River boats, and from New Orleans to New York or Liverpool by steamer, may in some way be connected with the controversy so as materially to affect its decision. In fact it is impos-

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sible to set any limit to the data that may have an important bearing upon the question at issue, or to say of any fact concerning commerce or transportation that it would necessarily be wholly irrelevant in such a controversy; yet the parties defendant, when such a case is heard before the Interstate Commerce Commission or the courts of the United States, are only the carriers between Chicago and New York. When the interdependence of all rates is thoroughly understood and the extent and importance of this condition fully appreciated, it will be a matter of little surprise that, through the absence of sufficiently comprehensive information in particular cases and through the impracticability of treating the subject of railway rates under the present system in the broad and thorough manner absolutely essential to the correction of the evils now existing, even the clear-headed and able men who have constituted the Interstate Commerce Commission have been led into occasional errors, which have furnished arguments to those who from self-interest desire a return to the system in vogue when there was no public supervision of interstate commerce by rail.

The conflict of interest between the different corporate units of the railway system is the primary cause of the evils attendant upon railway transportation as now conducted. This fact being clearly established, it is at once evident that that portion of the Interstate Commerce Law which was intended to perpetuate competition, *i.e.*, the fifth or anti-pooling section, is radically antagonistic to any wise and practicable system of railway regulation. It is necessary at the outset, as a first step toward a system under which railway rates can be made equal to all, that this restraint upon the carriers should be removed — not in order to save them from the bankruptcy that is almost certain to follow the vicious methods now in vogue; not for the sake of the thousands whose small savings have been invested in railway securities in the reasonable belief that Congress would not legislate so as to destroy an investment through which private capital is made to perform a public function: but in order to relieve individuals, classes of property and localities from the unjustly discriminating charges for railway service from

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which they now suffer. At the same time Congress should give some substantial finality to the findings of the board of railway experts which, under the name of the Interstate Commerce Commission, it has created to adjudicate between the railways and their patrons, and should strengthen the visitorial functions of that body by granting whatever amendments to the law are necessary in order to secure the production of all the legal testimony desired, and by considerably widening the scope of its statistical investigations.

But this is only a beginning of progress toward more enlightened methods of dealing with this important industry. It has never been found profitable to legislate in restraint of natural economic forces; but the best results have accrued when statesmen have frankly recognized the tendency of those forces and have sought to make their operation useful to society. The force which tends toward the consolidation of railway properties is one of the most powerful, and it is now recognized that such consolidation is in the public interest. All provisions forbidding or hindering the various forms of consolidation of parallel or connecting railways, whether contained in state constitutions or in federal or state statutes, should be repealed, and public and legislative encouragement, so far as practicable, should be generously accorded to every step that tends toward the complete harmonization of the railway system. If this somewhat radical change in the attitude toward the railway monopoly can be effected, it will not be long before favoritism will become as rare in railway rates as in the rates of taxation.

H. T. NEWCOMB.

WASHINGTON, D.C.

[NOTE. — On March 30 of this year the Supreme Court at last handed down a decision in the case of Buggy Co. *vs.* Railway, referred to in the note on page 202. — EDS.]

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TWENTY-FIVE YEARS OF POLITICAL FINANCE.

THE purpose of this article is broadly to trace the influence of party politics upon the currency of the United States since the close of the Civil War. I take this period because at its beginning, in the first place, the legal-tender notes of the United States were clearly recognized as debt to be paid, and in the second place, there was no dispute of any importance that all debt should and would be paid in the money of the world. The first of these principles has since been the subject of a long and severe political struggle, from which it has come out in some measure weakened. The second principle has been the subject of a struggle still more prolonged and violent, which cannot yet be said to have ended.

The first sign of party politics in the financial legislation of this period was shown in the Fortieth Congress, in the long session preceding the presidential election of 1868, and in the course of that manœuvering for position which generally marks such a session. On the 4th of February, 1868, the "authority of the secretary of the treasury to make any reduction of the currency by retiring or cancelling United States notes" was "suspended." These notes at the close of the fiscal year 1865 amounted to $431,066,427. Two years later, under the policy of Secretary of the Treasury McCulloch, they were reduced to $371,783,597. At the date of returns nearest to the passage of the law suspending his authority to make reductions the amount had fallen to $356,000,000. This law was the first deflection in the legislation of the United States from the strict principle by which the legal-tender notes were treated as debt to be paid as promptly as possible.

In the national convention of the Democratic Party held in New York in July, 1868, the following was adopted :

> Where the obligations of the government do not expressly state upon their face, or the law under which they were issued does not

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provide, that they shall be paid in coin, they ought in right and justice to be paid in the lawful money of the United States.

One currency for the government, the people, the laborer and the office-holder, the pensioner and the soldier, the producer and the bond-holder.

Here is a practical denial of both the principles to which I have referred as recognized at the close of the war. It is a denial that the United States notes are debt, since it proposes to pay with them certain obligations of the government. It is a denial that all debt should be paid in the money of the world, since it proposes to "pay" a part of the debt of the United States in notes of the United States. It is needless to trace in detail the origin of this policy. It may, I think, fairly be said to have been due to the desire of the leaders of the Democratic Party to get away from the questions directly connected with the war for the Union, and to escape the discredit naturally attaching to the opposition party during that tremendous and successful struggle. Whether the party had been right or wrong, sincere and patriotic or factious and mischievous, it had steadily been defeated, and there was no hope that it would not still be defeated on issues that should keep alive the passions of the war. Here was an issue practically novel, in which shrewd men saw a chance to assume the championship of the many against the few, of the poor against the rich, of equality against privilege and monopoly. I do not question their sincerity; and their foresight is justified by the event to the extent that they recognized the existence and possible spread of a sentiment which in one way or another has exerted a powerful influence on all subsequent party contests. If this sentiment has not given victory to the party that first openly appealed to it, it has profoundly modified the policy of their opponents and the current of national financial legislation.

The Democratic Party was defeated in 1868. The House of Representatives elected that year included 131 Republicans and only 72 Democrats. Immediately after the opening of its term (March 18, 1869), the Congress passed the act to strengthen the public credit, as follows :

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In order to remove any doubt as to the purpose of the government to discharge all just obligations to the public creditors and to settle conflicting questions and interpretations of the laws by virtue of which such obligations have been contracted, it is hereby provided and declared that the faith of the United States is solemnly pledged to the payment in coin or its equivalent of all the obligations of the United States not bearing interest, known as United States notes, and of all the interest-bearing obligations of the United States except in cases where the law authorizing the issue of any such obligation has expressly provided that the same may be paid in lawful money and other currency than gold or silver. . . . And the United States also solemnly pledges its faith to make provision at the earliest practicable period for the redemption of the United States notes in coin.

This act may be regarded as the formal and legal expression of the decision reached at the election of 1868. Between this and the Resumption Act of 1875 are to be noted two measures which aroused no party discussion at the time, but both of which became afterwards of great importance. One is the act of 1870 which authorized the issue of $1,500,000,000 in bonds at 5, 4½ and 4 per cent (the latter $1,000,000,000) for the refunding of the outstanding United States bonds. This is of interest chiefly because its provisions were resorted to long after in maintaining the gold reserve of the treasury. The second is what has since been denounced as the "silver demonetization act." It was a very simple and innocent piece of legislation, its avowed and real and sole purpose being the "revising and amending the laws relative to the mints, assay-offices and coinage of the United States." It regulated the organization and operation of the mint with its subordinate and associate offices, made the mint a bureau of the treasury, and placed at its head the Director of the Mint. But the interest of the act for the present discussion lies in the fact that it enumerated the gold coins, "which shall be a legal tender in all payments at their nominal value when not below the standard weight and limit of tolerance," and also enumerated the silver coins, omitting the silver dollar, and limiting the legal tender of those mentioned to "five dollars in any one payment." From the

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passage of this law, the silver dollar ceased to be one of "the coins of the United States" legally, as it had long before ceased to be in fact.

At the time the law was passed there was but little coin of any sort in circulation, depreciated paper having forced it out; but long before the issue of paper money silver had ceased to circulate, because it was undervalued in the legal ratio to gold. Unquestionably the intention of Congress in this law was to drop the silver dollar from the legal coinage; but that intention was in no wise concealed, and it met with no serious opposition. The inflationists, or advocates of cheaper money, who have since condemned the act so roundly, made no opposition at the time of its passage, for the obvious reason that the silver dollar was then not cheaper but dearer than the gold dollar, and the currency could not be inflated by authorizing the payment of debts in coin that commanded a premium.

Meanwhile political forces were tending strongly toward change. The extraordinary success of the Republican Party in the presidential election of 1872, and in the election of Representatives in the same year, was followed in 1874 by signal reverses. In the Forty-fourth Congress, the term of which began in March, 1875, the Democrats had a vote of 161 to 100 Republicans in the House, while in the Senate their numbers had risen in six years from 13 to 29. Many influences which it is not necessary to describe had aided in this change. The significant point for the present purpose is that the hold of the Republican Party on the government was, for the first time since the election of Lincoln, distinctly shaken. The leaders of that party could no longer content themselves with asking how they would use their power. They were compelled to ask how they should keep what they had and regain what they had lost. Whether they had used power, when they had so much of it and so firm a grasp of it, wisely or honorably, I do not inquire. I wish only to point out that they were now forced to study the change that had taken place in public opinion, to divine as far as possible its future course, and so to guide their policy as to take the most by it.

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It was plain that public opinion was deeply interested in the question of the currency. The agitation begun in 1868 had not died out. It had been stimulated and intensified by the panic of 1873, which, on the one hand, had convinced a large part of the voters, and especially of the business men, that a return to a currency based on specie was needed, and on the other, had plunged a multitude of people into distress or bankruptcy, from which they sought relief in an inflation of the currency. Following that panic, in the first session of the Forty-third Congress, in which the Republicans still held the House by the heavy majority elected in 1872 and had a plurality of thirty-one in the Senate, there were strenuous efforts to inflate the legal-tender circulation. A bill fixing the maximum of United States notes at $400,000,000 passed both houses, was vetoed by President Grant (April 22, 1874), and failed to pass over the veto. Later what was known as the "compromise-inflation" act — the first to which that ill-omened adjective was generally attached — passed and became a law. It fixed the maximum of the United States notes at $382,000,000, and was in effect an act to legalize the action of the treasury in using, at the time of the panic, $26,000,000 of the previously retired notes.

When the Forty-third Congress met, in December, 1874, the elections of that year had, as I have noted, wrought havoc with the overwhelming preponderance of the Republican Party. The advocates of the return to specie payments saw the need of prompt and efficient action, and the pledge of 1869 was to be carried out before the control of Congress passed from the hands of the Republicans. A vigorous campaign was begun, and by January 14, 1875, the law for the resumption of specie payments [1] was placed upon the statute book.

[1] Following is the essential part of this law: "Sect. 3. That section 5177 of the Revised Statutes of the United States, limiting the aggregate amount of the circulating notes of national banking-associations, be and is hereby repealed; and each existing banking-association may increase its circulating notes in accordance with existing law without respect to said aggregate limit; and new banking-associations may be organized in accordance with existing law without respect to said aggregate limit; and the provisions of law for the withdrawal and redistribution of national-bank currency among the several States and Territories are hereby repealed. And whenever and so often as circulating notes shall be issued to such

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The plan of resumption provided in this bill was very clear. It removed the limit on national bank circulation; required the reduction of the volume of United States notes to $300,000,000, contingent on the issue of bank notes to the amount (in round numbers) of $100,000,000 and the redemption of United States notes on and after January 1, 1879, in coin on presentation. The passage of the law marked the extreme point of advance in the reëstablishment and application of the principles to which I have referred — the payment of the public debt in the currency of the world and the recognition of the legal-tender notes as debt. During the next three years not only was gold the standard of the currency of the United States, but no other metal possessed the legal-tender quality. Under the provisions of the Resumption Act some $36,000,000 of the United States notes were retired, and their volume was reduced to $346,681,016, at which point it still rests.

No sooner, however, had this advanced position been reached, than the efforts of those whom, for lack of a better general term, I shall call the inflationists, were directed with renewed energy first to checking the advance and then to forcing a retreat. The Resumption Act awakened strong opposition, which was shared by probably the majority of active Democrats and by a considerable minority of Republicans. In the presi-

banking-association, so increasing its capital or circulating notes, or so newly organized as aforesaid, it shall be the duty of the Secretary of the Treasury to redeem the legal-tender United States notes in excess only of $300,000,000 to the amount of eighty per centum of the sum of national-bank notes so issued to any such banking-association as aforesaid, and to continue such redemption as such circulating notes are issued until there shall be outstanding the sum of $300,000,000 of such legal-tender United States notes and no more. And on and after the first day of January, A.D. 1879, the Secretary of the Treasury shall redeem, in coin, the United States legal-tender notes then outstanding on their presentation for redemption at the office of the Assistant Treasurer of the United States in the city of New York in sums of not less than $50. And to enable the Secretary of the Treasury to prepare and provide for the redemption in this act authorized or required, he is authorized to use any surplus revenues, from time to time, in the treasury not otherwise appropriated, and to issue, sell and dispose of, at not less than par, in coin, either of the descriptions of bonds of the United States described in the act of Congress approved July 14th, 1870, entitled 'An Act to authorize the refunding of the National Debt,' with like qualities, privileges and exemptions to the extent necessary to carry this act into full effect, and to use the proceeds thereof for the purposes aforesaid." 18 Stat. at Large, 296.

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dential canvass of 1876, the Democratic convention "denounced" the resumption clause of the act of 1875 as "a hindrance to a speedy return to specie payments," and demanded its repeal. Several attempts to secure a repeal were made in the Forty-fourth Congress, which in great part were defeated by the firmness and parliamentary skill of Mr. Samuel J. Randall, the Democratic speaker of the House. A repealing bill finally passed the House, but failed in the Senate.

In the Forty-fifth Congress (March 4, 1877 to March 3, 1879) the Republicans in the House numbered 137, to 156 Democrats, while in the Senate they had 39 members to 36 Democrats, with one Independent. The president was Mr. Hayes, seated after a disputed election, on the decision of the Electoral Commission. It will be seen that parties were very evenly balanced. The passions of the war certainly were not stilled, but the hold of the Republicans as the war party was hopelessly broken. Questions immediately connected with the war or reconstruction no longer engaged the exclusive attention of the public or of Congress. The sentiment on which the policy of the Democratic convention of 1868 was based had grown greatly. The leaders in each party either had in a great degree become animated by it or saw their advantage in appealing to it. They no longer confined their efforts to changing the policy of the government as to the legal-tender notes, though these were not neglected, but found a new field in advocating the use in the currency, "as money of final redemption," of silver, which, since 1873, had been slowly but steadily falling in market value.[1] Almost immediately on the opening of Congress in 1877 (December 10), Mr. Stanley Matthews, senator from Ohio, a Republican and an intimate political friend of President Hayes, called up a resolution declaring that all the bonds of the United States issued under the Refunding Act of 1870 and the Resumption Act of 1875 should be

payable, principal and interest, at the option of the government of the United States, in silver dollars of the coinage of the United States, containing 412½ grains each of standard silver; and that to

[1] The average price had declined from $1.29 per ounce to $1.15.

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restore to its coinage such silver coins as a legal tender in payment of said bonds, principal and interest, is not in violation of the public faith nor in derogation of the rights of the public creditor.

This resolution was adopted by a vote of 43 to 22. The Republicans gave 19 for to 15 against it; the Democrats 23 for to 7 against; and Senator David Davis, the Independent, also voted for the resolution. At this time the silver in the dollar described was worth in the market a little less than ninety-one cents.

In the same Congress the House of Representatives, by a very heavy vote (163 to 34), passed the bill introduced by Mr. Bland of Missouri for the free and unlimited coinage of full legal-tender standard silver dollars. This bill was amended in the Senate under the leadership of Mr. Allison, of Iowa, and finally, on the report of a conference committee, was passed by both houses. It was vetoed by President Hayes, Mr. John Sherman being the secretary of the treasury, and on February 28, 1878, was passed over the veto. The vote in the Senate was 47 to 21; in the House, it was 196 to 73. The vote by party was as follows:

		Senate.	House.	Total.
Republicans	For	24	80	104
	Against	14	46	60
Democrats	For	23	116	139
	Against	7	27	34

The bill was entitled "An act to authorize the coinage of the standard silver dollar and to restore its legal-tender character." It provided that "there shall be coined at the several mints of the United States silver dollars of the weight of 412½ grains troy of standard silver," which "shall be a legal tender at their nominal value for all debts and dues, public and private, except where otherwise expressly stipulated in the contract." It directed the purchase "from time to time" of "silver bullion at the market price thereof, not less than $2,000,000 worth per month, nor more than $4,000,000 worth per month," "to be coined monthly as fast as so purchased into such dollars." It

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provided further that, on the deposit of standard dollars, the treasury should issue certificates, "receivable for customs, taxes and all public dues," which "when so received may be reissued." And finally, it directed the president to invite the governments of the Latin Union and of other European nations to a "conference to adopt a common ratio between gold and silver for the purpose of establishing internationally the use of bimetallic money and securing fixity of relative value between those metals."

Three days later (May 31, 1878), the president signed an act declaring that "it shall not be lawful" for the treasury

> to cancel or retire any more of the United States legal-tender notes; and when any of said notes may be redeemed or be received into the treasury under any law from any source whatever and shall belong to the United States, they shall not be retired, canceled or destroyed, but they shall be reissued and paid out again and kept in circulation.

With the legislation of 1878 the currency system of the United States assumed the form which it retained for the next twelve years. The legal-tender notes became redeemable in coin on the 1st of January, 1879, and before that date advanced to par. The coinage of standard dollars was resumed, but was kept at the lowest point ($2,000,000 worth of bullion) per month. It is not within the scope of this article to trace the practice and policy of the treasury under this legislation. It is enough to say that each successive secretary sought by every means to prevent the accumulation of silver in the treasury. The fortunes of the two great political parties during this interval continued to fluctuate. The Democrats lost their majority in the House of Representatives in the elections of 1880 by a small margin; regained it, with decided increase, in 1882; elected their president by a close vote in 1884; and in the House retained a majority, which, however, steadily dwindled until it was lost in the elections of 1888. In the Senate the relation of the two parties changed in a curious way, owing to the long term and indirect election of senators. In the Forty-fifth Congress the Republicans had a plurality of three in the Senate; in the Forty-sixth the Democrats had a plurality of ni

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in the Forty-seventh the two parties were equal, with Senator Davis of Illinois and Senator Mahone of Virginia semi-detached from both; in the Forty-eighth there were 38 Republicans and 36 Democrats, with two "Readjusters" from Virginia, acting generally with the former; in the Forty-ninth there was a majority of eight Republicans; in the Fiftieth the Republican majority was reduced to two.

In the elections of 1888, which turned chiefly on the tariff issue, raised with great boldness by President Cleveland in his message of 1887, the Republicans regained the presidency and a small majority (eight) in the House. During the next year four new states were admitted to the Union — North Dakota, South Dakota, Montana and Washington, and in 1890 there were added Idaho and Wyoming. The number of states was thus increased from 38 to 44, and that of the senators from 76 to 88. The senators from all these new states, together with those from Nevada, admitted in 1864, and from Colorado, admitted in 1876, were advocates of the free and unlimited coinage of silver, and gave to that policy a solid vote of sixteen under all conditions.

There was now in the Senate nearly a two-thirds majority for the unlimited coinage of silver. The strength of that measure in the House was not sufficient to carry it, so far as the votes taken show, but it was enough to force the leaders on both sides to believe that "something must be done for silver." A bill was reported by the House Coinage Committee for the purchase of $4,500,000 worth of silver in each month, to be paid for in United States legal-tender notes, and these notes were to be exchangeable for their face value in bullion at the market price on the day of exchange. When the market price reached one dollar for 371.25 grains of silver, any owner of bullion might have it coined into legal-tender dollars. An amendment providing for free coinage of silver was offered, and was rejected by 116 to 140. The purchase bill passed, and in the Senate a free-coinage substitute was passed 43 to 24. This was rejected in the House by a majority of 17, and, after conference, the purchase act was adopted in both houses and signed by President

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Harrison, July 14, 1890. The party vote on the free-coinage substitute in the two houses was as follows :[1]

		SENATE.	HOUSE.	TOTAL.
Republicans	For	14	22	36
	Against	21	130	151
Democrats	For	29	112	141
	Against	3	22	25

The act as passed directed the purchase of 4,500,000 ounces of silver bullion in each month, to be paid for in treasury notes. These notes were redeemable "in coin," might be reissued, were to be neither more nor less in amount than the cost of the bullion and the silver dollars coined therefrom, and were to be a legal tender, receivable for public dues and available as part of the lawful reserve of national banks. There was a provision as to coinage, not important in connection with this article. The law contained the following provision, which afterwards exercised a very great influence on the policy of the government :

> Upon demand of the holder of any of the treasury notes herein provided for, the secretary of the treasury shall, under such regulations as he may prescribe, redeem such notes in gold or silver coin at his discretion, it being the established policy of the United States to maintain the two metals on a parity with each other upon the present legal ratio, or such ratio as may be provided by law.

Of the political situation which brought about the passage of this law, Senator John Sherman wrote four years later :[2]

> The authorship of this law has been generally credited to me, and it was commonly called the "Sherman Silver Law," though I took but little part in framing the legislation until the bill got into conference. The situation at that time was critical. A large majority of the Senate favored free silver, and it was feared that the small majority against it in the other house might yield and agree to it. The silence of the president on the matter gave rise to an apprehension that if a

[1] Disregarding one "Wheeler" — substantially what was afterwards known as a "Populist."

[2] John Sherman's Recollections of Forty Years in the House, Senate and Cabinet. An Autobiography. 1895. Vol. ii, p. 1069.

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free-coinage bill should pass both houses, he would not feel at liberty to veto it. Some action had to be taken to prevent a return to free silver coinage, and the measure evolved was the best attainable. I voted for it, but the day it became a law I was ready to repeal it, if repeal could be had without substituting in its place absolute free coinage.

This is certainly authoritative. Probably it is nearly a correct statement. The reference to the "silence of the president" is significant. There is no reason to think that Mr. Harrison was blind to the probable effects of the free coinage of silver. If he did not "feel at liberty to veto" a free-coinage bill, it is not likely that he really approved one. The inference is that his motive was a political one — not necessarily discreditable, since he might have believed that the defeat of his party would be a greater mischief for the country than free coinage, but clearly not a motive related to the specific merit of the bill.

The key to the situation may fairly be said to have been held by the senators from the silver-producing states. These senators were very firm in their attachment to free silver coinage, and were prepared to make terms with either of the great parties to advance their cause. While political coalitions are not readily proved, it is safe to say that the support given by Republican advocates of silver in opposing certain legislation affecting the South — popularly known as the "Force Bill" and the "Federal Elections Law" — had secured the coöperation of Democratic senators in aid of free silver; and it is equally safe to say that, in the legislation of 1890, Republicans in both houses — and, according to Senator Sherman, in the White House as well — were influenced by the probable effect of a "silver bolt" upon the fortunes of their party. It is a common statement in Washington that both parties in turn have been "held up" by the silver men and compelled to surrender what the latter felt that they were in a position to demand. The statement is picturesque. So far as the facts are concerned it is probably not far from the truth. The implication as to motive is of questionable justice. The silver men in public life doubtless are guided by their conception of their own

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interests and those of the communities they represent. They do not in that differ very widely from other men in public life. Under a representative government it is the resultant of such conflicting interests that determines in a large degree the course of politics. It is to be hoped that in the long run the direction thus given is for the best; but whether it be or not, the fact remains that interests affected by politics are advanced or protected by political effort — by what in the graphic military phrase so apt to politics is known as "fight."

In the Congressional elections of 1890, the Republicans were signally defeated, winning but 88 seats in the House to 235 for the Democrats. In the next national elections, 1892, the Democrats again triumphed, winning 217 seats, to 121 for the Republicans; at the opening of the Fifty-third Congress, March, 1893, there were in the Senate 44 Democrats, to 37 Republicans and four Populists, and Mr. Cleveland was again in the executive chair. In 1891 and again in 1892, a free-silver bill was adopted in the Senate, but the majority was decreasing. In 1891 the vote was 39 to 27; in 1892 it was 29 to 25. The first bill was adversely reported in the House and dropped; the second was rejected by a vote of 136 ayes to 154 noes.

On August 11, 1893, the Congress was convened in extraordinary session by the president to consider the financial situation. He strongly urged the repeal of the act of 1890. The House responded promptly; by August 28 the repeal act was passed by a vote of 239 to 108. Previous to this vote, free coinage at ratios from 16 to 1 to 19 to 1 was rejected, and the restoration of the Bland Act was defeated by 136 to 213. The Republicans cast 15 ayes to 110 noes; the Democrats and Populists 121 ayes to 103 noes. On the vote to repeal the purchasing clause of the Sherman law, the Republicans cast 101 ayes and 24 noes; the Democrats 138 ayes to 85 noes. The bill then went to the Senate. It is hardly necessary here to recall the long struggle of two months, in which the minority — there being no rule under which so-called debate could be stopped — involved that body. Finally a vote was reached on October 27. A free-coinage amendment was defeated by a vote of 28 to 39,

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and a repeal bill was passed by 43 to 32, ten senators not voting. Counting the pairs announced, the parties in the Senate were on the vote divided as follows: Republicans, 26 ayes to 11 noes; Democrats, 22 ayes to 22 noes; Populists, 4 noes.

By the act, which became a law November 1, 1893, the purchasing clause of the law of 1890 was repealed, and there was added the following clause, which is probably the most curious statutory provision ever enacted by a legislative assembly:

> And it is hereby declared to be the policy of the United States to continue the use of both gold and silver as standard money, and to coin both gold and silver into money of equal intrinsic and exchangeable value, such equality to be secured through international agreement or by such safeguards of legislation as will insure the maintenance of the parity in value of coins of the two metals and the equal power of every dollar at all times in the markets and in the payment of debts. And it is hereby further declared that the efforts of the government should be steadily directed to the establishment of such a safe system of bimetallism as will maintain at all times the equal power of every dollar coined or issued by the United States in the markets and in the payment of debts.

This was probably intended on the one hand to soothe the feelings of those who had favored free silver coinage, and on the other to reassure those who favored a stable currency governed by the gold standard. It may be remarked that it left unimpaired the declaration of the act of 1890, that it is "the established policy of the United States to maintain the two metals on a parity with each other upon the present legal ratio or such ratio as may be provided by law."

This is the last legislative action of any importance relating to the currency. I shall not here refer to the policy by which gold payments have since been maintained. That has been due to the courage and force of the president, hotly opposed by a considerable portion of the Democratic Party and unaided in Congress by either his own or the opposing party. It has very deeply influenced public opinion, and that influence may plainly be shown in the nominating conventions about to meet.

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If I understand the meaning of the history which I have sought succinctly to review, the following conclusions are clearly to be derived from it : Since 1868 the question of the currency has not been a controlling issue in any national election ; legislation on the subject has been determined by the rivalry of the two great parties in efforts to obtain or retain the support of a considerable but not definitely known inflation vote ; the successive votes in Congress, and particularly in the House, show a distinct decrease in the inflation strength, which decrease has been prevented from having its full effect in the Senate by the disproportionate representation in that body of the new states; and finally if, by the action of the nominating conventions now near at hand, the currency issue shall be presented, the signs point to the defeat of whichever party shall favor the inflationist side.

NEW YORK CITY. EDWARD CARY.

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THE GOLD RESERVE; ITS FUNCTION AND ITS MAINTENANCE.

I.

THE question as to the part played by the government's gold reserve in maintaining the value of the legal-tender notes is by no means a simple one. That a number of factors besides this reserve must also be taken into account, becomes apparent to any one giving the subject more than a superficial consideration. To accord to each factor its relative importance is difficult, as is always the case when one attempts to express numerically the causal influence of several things, each of which is indispensable to a result. It may be shown, however, that the views most widely prevalent in political, business, and even some economic circles, regarding the above-mentioned question, are not accurate. Yet the paradox must not be overlooked that widely accepted views on the financial situation, even those that are wrong, exert an influence towards proving their own correctness. This is due to the importance of public confidence in a *régime* of extended credit operations. There exists in no country a financial system so good that it can stand unshaken in a period of general fear and distrust on the part of the business world.

It may be replied to this that it is a part of the goodness of financial measures to inspire confidence. This is in general true; but there may be an occasion where an unusual and complex problem is presented, requiring for its correct solution fine distinctions and close reasoning outside of the realm of the business man's practical experience. In such a case he has reason to expect from special students of the subject a candid and correct statement of the theory involved. But in the present instance he finds, on the one hand, the advocates of fiat money, whose notions bear such evidence of exaggeration that they fail to secure his assent; on the other hand,

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those who in their dread of the dangers of "political money" and their distrust of the popular judgment on the subject, give out exoteric doctrines which are simple only by virtue of evading the difficulties involved. If false notions, thus fostered, weaken the public confidence, this fact does not prove the inherent badness of the financial situation.

The idea most widely held as to the influence of the government gold reserve on the value of the legal-tender notes now redeemed in gold on demand, is that the reserve supports the value of the notes, — that without the reserve the notes would "certainly depreciate." Not that it is believed that the certificates calling for silver would sink to the bullion value of the silver, and the greenbacks sink to nothing. There is some uncertainty here; but probably the reply of the editor of a prominent city paper, that the depreciation would be "at least ten per cent," is fairly representative. Unless, however, one has some principle in mind whereby the value of the money is determined when no provisions are made for its redemption on demand, one might as well say "one hundred per cent" as "ten per cent"; and if one has in mind such a principle, permanent depreciation cannot be expected without assuming either that there is less business to be done, or that a sudden improvement in the methods of exchange has been made. Belief in depreciation would then be based on quite other grounds than the disappearance of the gold reserve; and further, the assumptions thus made may be the very reverse of the facts.

As opposed to the prevalent view the following propositions are advanced:

1. To hold that the gold reserve is the cause which operates to keep the notes on a par with gold, is exactly to reverse the causal order: in fact, a gold reserve can be maintained only so long as there are other adequate reasons operating to keep the notes in circulation at par with gold.

This is not mere word-quibbling. If the notes exist in quantities so limited that on a par with gold they are insufficient to do the entire money work, they cannot crowd gold out

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of circulation, but must be supplemented by it. So long as there is general confidence that this condition will continue, there being no reason to prefer gold to paper, a gold reserve may be easily maintained. But even though the notes have not nearly reached the point of actual excess, the slightest fear on the part of the public might cause a drain of the gold reserve. Depreciation would not, however, result so long as the amount of gold money in the country were considerable. The "gold reserve of the country," as it has been called,[1] being thus the indispensable condition to the maintenance of the parity of the notes, is of far greater importance than the "gold reserve of the treasury," which is merely a resulting possibility.

The usual order of thought is: (*a*) The government accumulates a gold reserve; (*b*) the gold reserve inspires confidence; and (*c*) as a result the notes circulate at par. This is the view generally taken of the way in which the resumption of specie payments was brought about in 1879, and its crudities are justly open to criticism.[2] Without favorable circumstances in our foreign trade relations, and a large reduction in the *per capita* circulation, Congress might have passed resolutions and accumulated a golden treasure in vain. Rather the order of thought should be: (1) The notes exist in quantities so limited that they are insufficient for the money needs, and thus circulate side by side with gold; (2) the public has confidence that such parity is to continue; (3) it is therefore possible for the government to retain a gold reserve. By a not uncommon fallacy the third condition comes to be looked upon as the cause of the first.

2. It is misleading to consider the gold reserve as a banking reserve to secure the redemption of notes, or to view the government, when it is issuing notes, as in the banking business.

There are, doubtless, some good reasons for taking this view; but there are weighty considerations against it. The

[1] *Yale Review*, February, 1895.

[2] See, *e.g.*, the criticism by W. C. Ford, reviewing a work on American financial history, POLITICAL SCIENCE QUARTERLY, I, 510.

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most dangerous comparisons are those where along with obvious likenesses go important differences; and such a case is here presented. A government issuing legal-tender notes is in a position very different from that of a bank. The disappearance of the reserves of a bank necessitates the closing up of its affairs and the withdrawal of its notes from circulation, with greater or less loss to the holders of them; but the gold reserve of the treasury could be abolished without indicating the bankruptcy of the government, and, as will later be shown more conclusively, without necessary depreciation of the notes. The great differences in legal status between the two classes of issuers involve important differences in the monetary character of the two classes of note issues.

3. The difference between the circumstances of the present time and those of the three years preceding the repeal of the Sherman Act in November, 1893, as they affect the exports of gold, is not clearly enough discerned by the general public.

Before the date mentioned the steady additions to the circulating medium, in the form of treasury notes, amounting to $155,000,000 in three years, were an adequate cause for the expulsion of a large amount of gold. In fact, the effective stock of gold money on June 30, 1893, was about a hundred millions less than three years before.[1] The continuation of this process would eventually, of course, have driven gold out of circulation. During this period of uneasiness the diminution of the gold reserve was closely watched, and thereby the habit was firmly fixed of considering it as the index, marking the steady disappearance of gold. The precious metal was leaving the country to remain away so long as its place was taken by other forms of money. Yet, even under these circumstances, the fear of the business public that the forms of money other than gold would soon depreciate was not well founded. It would have required a number of years for the gold to be driven out; and thereafter the continued coinage of silver in the same quantities as before would have been accompanied

[1] Report of the Secretary of the Treasury, 1894, p. 12.

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by a very gradual — not, as seems to have been generally assumed, a sudden — depreciation of the dollar. This error was clearly pointed out in 1884 by conservative authorities, when the Bland Act was in operation, and the same monetary principle was applicable.[1] After the repeal of the laws mentioned, the fear that legal-tender notes and silver dollars would depreciate lacked even this remote basis of reason, for the place of the exported gold was not being supplied and no source of inflation remained open. Every exportation of gold taken from the circulation and not from the current output of the American mines, tended, therefore, to raise the value of the money remaining — legal-tender notes as well as coin. Though there were but sixty-four million dollars of gold in the treasury, July 1, 1894, exclusive of that represented by gold certificates outstanding, there were 199.6 millions in the national banks, and 362.7 millions held by other banks and individuals.[2] The gold which must disappear from circulation before the legal-tender notes would depreciate was represented not by the first-named amount, but by something near the total of the three amounts. The shipment of even a comparatively small portion of this must, by lowering prices, have set in operation forces to change the balance of our foreign trade, and eventually to check the gold exports. The situation afforded a nearly perfect example of the currency principle at work, the paper money remaining almost unchanged in amount, and the entire volume of money acting as if constituted uniformly like that part which had the highest value in international trade. If, under such circumstances, shipments of gold are large and long-continued, business stringency may be caused by lowered prices and a tight money-market; but there is nothing in the situation to cause legal-tender notes to be less valuable than gold coin.

[1] *E.g.*, Prof. S. M. Macvane, in a communication to *The Nation*, March 13, 1884, "The Prospect of a Premium on Gold."

[2] Report of the Secretary of the Treasury, 1894, p. 176.

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II.

The foregoing statement of certain principles bearing upon the present monetary problem differs from the views most widely entertained, and from those implied in the utterances and actions of the administration. Yet it is not presented as anything new in monetary science, but, on the contrary, merely as the application to a concrete problem of long-accepted and authoritative monetary theories. In the light of these propositions let us consider further the existing problem, taking up in order the questions: 1. What reason is there for maintaining a gold reserve? 2. Why has it been difficult to maintain? 3. What will make its maintenance possible and easy?

1. *Why should the government maintain a gold reserve?* — We have seen that the gold reserve is not to be looked upon as the efficient cause of the phenomenon that all kinds of money remain at par with gold. That cause is the strict limitation of the circulating medium. It may even be truthfully asserted that if the gold reserve were done away with entirely there would not necessarily result any permanent depreciation of any of the circulating money. The depreciation, if it occurred, would, other things remaining the same, be only temporary and slight. Not only is this the conclusion reached by deductive reasoning from monetary principles, but there are historical instances in the United States, Russia, Austria, France, and elsewhere which indicate its truth. No newly invented financial expedient is required to enable a strictly limited amount of token currency to continue in fact to be exchangeable in the markets for full-weight coin, though no special gold reserve exists to ensure its formal convertibility.

Should a slight depreciation take place, however, following a change in business needs or methods, equivalent to an inflation of the currency, it would be necessary merely to reduce the amount of money outstanding. This could be done by exchanging for the notes interest-bearing bonds which would not circulate as money. I do not mean to endorse the soundness of the principle of the convertible-bond method, which

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would provide for the exchange of the notes for interest-bearing bonds on demand. This plan, which from time to time finds new advocates, makes the contraction of the volume of the notes depend upon the ruling rate of interest. It is, therefore, not a means of keeping at par an amount of notes permanently outstanding, but rather a means for automatically retiring them, whenever, at the rate of interest fixed by law, the bonds become a good investment. As a regulator of value its action must be a disappointment to those who advocate it.

The conditions which must coexist in order that the gold reserve may be maintained, will, even without the gold reserve, suffice to maintain the value of the money in circulation, except in the barely possible case below noted. The function of the reserve, therefore, is seen to be far less vital than it is generally supposed to be. That function would seem to be to insure against the shock to business that would result from a small and temporary premium on gold, which might possibly exist during a period of gold exportation. The disturbance might be considerable, but it would be slight indeed compared with the effects usually pictured.[1] The expense of keeping a gold reserve in ordinary times may be measured by the annual interest on a hundred millions, which is a small sum to pay as insurance against the danger of even the slightest disturbance of the great volume of business transactions. But it should be clearly seen that the importance of the gold reserve is not that it prevents the dollar from falling fifty per cent, or even ten per cent, but that it insures the public against a temporary depreciation of the very slightest degree. When a mistaken view on this subject prevails, the reserve becomes a misleading sign, a false fetich, to the business world.

2. *Why has it been so difficult to maintain a gold reserve?* — Whatever we may say as to the impossibility of a premium on gold under present circumstances, the fact remains that the

[1] In harmony with the above statement see editorial comment, *Yale Review*, May, 1892, discussing such a case: "For a moment, perhaps, the gold dollar would be at a premium. . . . An export [of gold] would cause a quick contraction of the currency."

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gold reserve has of late been constantly drawn upon. It was not formerly usual to withdraw the gold from the treasury when any was needed for shipment, only twenty-eight millions, we are informed,[1] having been thus withdrawn in over eleven years preceding July 14, 1890; whereas thereafter, "within less than five and a half years there was withdrawn nearly 375 millions." This was due primarily to the uncertainty of the public as to the monetary principles involved. When it has come to believe, and is encouraged to believe, that the declining gold reserve is the "barometer" indicating the approach of the depreciation of the legal-tender notes, it begins to retain its gold in preference to paper, and to obtain from the government reserve the gold for shipment. In this policy there may be only the vaguest hope of a profit, but it costs nothing to take that chance.

The much-discussed deficiency of the revenues may be shown to have contributed in more than one way to the difficulty in question. In the first place, public confidence is greatly enhanced by the spectacle of accumulating revenues, and is correspondingly depressed by growing deficiencies; without analyzing accurately the difficulty, the public anticipates in the latter case the exhaustion of the gold reserve. In the next place is to be considered the fact that, owing to the deficiency of revenues, the current needs of the government would have necessitated the borrowing of an amount about equal to that secured, at least by the earlier loans, to save the gold reserve. By the method pursued the redeemed notes were at once paid out for current expenses. Thus the borrowing led to no contraction of the currency tending to affect the foreign shipments. If, however, current receipts had been equal to expenditures, the receipts from the loans made to save the gold reserve would necessarily have been retained in the treasury, and every dollar of gold withdrawn for foreign shipments would have contracted the volume of the currency to that extent. There would thus have been at this time accumulated in the treasury not only the hundred million dollars of gold, but also legal-tender notes to the amount of 262

[1] The President's Annual Message, 1895.

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millions.[1] And finally, in another way, probably unforeseen, the method adopted of using redeemed legal-tender notes to supply the deficiency enhanced the difficulties of keeping a gold reserve. As soon as it became evident that the government, with a steady deficiency, intended to meet it in this indirect way, all would-be lenders were compelled to get possession of gold coin. The government was thus discriminating, in an important portion of its own transactions, against the very kind of money whose value these transactions were designed to maintain. Then, indeed, was set in motion the "endless chain."

3. *What will make the maintenance of the gold reserve possible and easy?* — Granted the validity of the foregoing reasoning, it appears that it would be impossible for the secretary of the treasury, even if he so desired, to cause more than a slight and temporary depreciation of the legal-tender notes or silver, at least under existing legislation and without opening some source of inflation. The conditions are favorable to the continued parity of all forms of money; but if the gold reserve is to be maintained, belief in that fact must exist in the business world. On the part of the agents of the government the exhibition of a confidence that circumstances are favorable, rather than dramatic asseverations of a purpose to save the country from impending ruin, is the conduct best suited to allay popular apprehension. Above all, the government should not in its own transactions discriminate against that form of money which it is seeking to get the public to accept as freely as gold. If its action be not absolutely impartial, the preference should be given to the forms of

[1] Or if all the legal-tender notes were in circulation, the gold reserve would be 362 millions. Unless a deficiency existed, every gold dollar borrowed would effect necessarily one of two things: either an increase of the gold reserve, or a retirement of legal-tender paper to that amount. This reasoning is not affected by the act of May 31, 1878, which provides that the notes "shall not be retired, cancelled or destroyed, but they shall be reissued and paid out again and kept in circulation." The plain purpose of this law is to treat the notes as a permanent form of money, not to prescribe that they or any other kind of money shall not constitute part of the surplus kept in the treasury, when Congressional appropriations permit such a surplus to exist.

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money other than gold; or else there is fostered the motive which it is sought to destroy. It is not difficult to devise measures of this opposite tendency, which, reversing the process of discrimination, would operate to accomplish a result now deemed so difficult of attainment. As illustrative of the principle in mind, the following methods are suggested:

(*a*) Loans to meet current expenses. If the current receipts are not meeting expenditures, and the gold reserve sinks to the hundred-million mark, bonds should be issued with the avowed purpose of supplementing the deficiency of revenues, in payment for which only legal-tender notes should be accepted.

(*b*) Loans to protect the gold reserve. The secretary should be empowered to issue short-time bonds if the gold reserve sinks to the hundred-million mark; but only legal-tender notes should be accepted in payment for them.

(*c*) Exchange of gold for notes, and *vice versa*. Gold should at all times be paid out on demand in exchange for notes, as at present; but the payment of notes to those offering gold at the treasury should cease some days before the closing of the bids for any new issue of bonds, except at a slight premium as compared with gold. Of course it is not expected that such a premium would ever be paid, as bidders would make the exchange in ample time.

These measures should be pursued until they accomplish the desired result, — making legal-tender notes more sought after than gold before a loan is made. It may seem to some that it is absurd to attempt to replenish the gold reserve by refusing to accept gold in payment of loans. But this is only one of many instances where to grasp directly for an object is to lose it. It may be thought that to pursue this course "until it accomplishes the desired result," might involve the borrowing of all the outstanding legal-tender notes. This conceivable; but absurdly improbable, result would mean simply the retirement for the time being of the legal-tender notes, and an equal contraction of the currency, which, by affecting prices, would induce the importation of gold. It may be predicted with assurance that long before the entire amount had been retired

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the drain on the reserve would cease. The cost of this action would be merely the amount paid for interest on the bonds during the time of the retirement of the notes.

The measures here suggested are by no means the only ones which would accomplish the end desired. There are no substantial reasons why the public should, in the existing circumstances, prefer one form of money to another, unless the government, by its discrimination, furnishes a motive. This it has been doing in the preference it has been giving to gold in the making of loans. In numerous ways other than those mentioned it is possible for the government to make the public incline to hold legal-tender notes rather than gold; and such a use of its power would certainly be more justified by a rational purpose than the course of late pursued, since it would end, instead of fostering, such difficulties as now exist.

I have not discussed the question whether the legal-tender notes ought to be permanently retired. The political possibility of their retirement is at present small indeed, but the sentiment in favor of keeping them on a par with gold is exceedingly strong. The course of recent events has convinced many that the two objects, the continuance of the greenbacks and the maintenance of their parity, are incompatible. This belief has gone beyond the circles of those favoring a gold standard, and is taking possession of the minds of the silver advocates, in whose minds it becomes another argument against the continuance of the present monetary system. The purpose of this paper has been to show that the two things are entirely consistent, and that the supposed difficulties are not inherent in the existing conditions, but are the results of mistaken ideas and actions.

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FREE COINAGE AND PROSPERITY.

BACK of the demand for the free coinage of silver there is one motive that lends energy to the movement, but, at the same time, takes away its respectability. This is, that the transition from a gold to a silver standard would have an immediate debt-scaling effect. But the demand for such transition derives its permanent strength from a more reputable motive. The advocates of this policy claim that, after we shall have made the change and "readjusted" existing debts, we shall gain a business advantage from the continued use of silver. It will expand the currency, raise prices, stimulate enterprise. The mines of the world will be drawn upon for both gold and silver; and this will mean a twofold source of new money for use among the nations.

This argument is ethically more creditable than the former; but, in the shape just presented, it is less creditable intellectually. For the extent to which any currency is capable of raising prices by a continued expansion depends, not on the absolute amount of that expansion, but on the percentage of enlargement that takes place within a given time. If the gold and the silver of the world were each to increase by one per cent a year, a currency made of one metal would have the same permanent effect on the trend of prices as a currency made of both. *In the transition* from a gold to a bimetallic currency, we should get rapidly rising prices; after the change had been completed, we should have a currency expanding as before at the one per cent rate. If the volume of business were to increase at the rate of two per cent a year, while other influences affecting prices were to remain unchanged, the currency would not expand as rapidly as the demand for it, and prices not only would fall, but would fall at the same rate as if only one metal had been used. Use ten metals instead of two — make coins of tin, platinum, copper, nickel, *etc.*, and if the grand composite still keeps the one per cent

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rate of general increase, prices will vary as they would have varied with a currency of gold alone. Wholly transitional, under such circumstances, is the rise in prices secured by the adoption of bimetallism. It is gained by adding to the stock of gold now used for ultimate payments an existing stock of silver.

The argument becomes intelligent when it claims that silver is likely to increase more rapidly than gold. If so, a money that is made of silver will more nearly keep pace, in its rate of increase, with the volume of business. Two general facts, therefore, need to be noted. The first is that, in the long run, almost any metallic coin of a fixed weight will gain in its purchasing power. Silver would do this as well as gold; and so would a composite coinage made of ten metals. The law of diminishing returns applies to mining as well as to agriculture. The more silver you want, the deeper you must dig for it, and the more refractory ores you must smelt. The transmuting of a raw metal into finished articles becomes a cheaper and cheaper process; but the extracting of the metal itself becomes dearer. A larger and larger fraction of the labor that is spent in making wares of silver, of gold, of copper or of tin must be spent in getting the crude material out of the earth. There are improvements in mining, as there are in other industries; but in spite of them, the continual working of more difficult mines and of more difficult ores makes the getting of the crude material, in the long run, relatively costly. Since a coin consists chiefly of raw metal,[1] we may therefore count on having before us a régime of falling prices, whatever metallic currency we adopt. The rate of the fall and the degree of steadiness in it will be greater with some metals than with others. The variations in the value of gold are, on the whole, comparatively steady. This metal fluctuates in amount and in cost; but the changes are less sudden than in the case of other metals.

[1] Of course it is true that the volume of a currency affects prices. It should not be necessary here to prove that, through changes of volume, the purchasing power of a coin is made to conform to the value and the cost of the bullion of which it is composed. It is at least clear that when a man can coin his gold at pleasure, he can buy with the coin about as much as he can get in exchange for the bullion.

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The second of the facts to be noted is that the prosperity of business requires, not a currency that shall remain unchanged in its purchasing power, but one that shall change, if at all, at a comparatively uniform rate. This fact is of paramount consequence, and the verification of it will repay any amount of study. It is not the rapidity with which gold gains in purchasing power, but the steadiness of the gain from year to year, that determines whether it is the best money that can be had by the business world.

A change in the *rate* of increase in the purchasing power of the coinage metal has a really disturbing effect; a steady and calculable appreciation does not. There exists in some acute minds what I venture to call a delusion about the effect on business classes of an advance in the purchasing power of gold that proceeds at a uniform rate. Conceding the prospect of a decided gain in the value of this metal, I deny absolutely that, *if it is steady and calculable*, it plays into the hands of creditors, burdens the *entrepreneur*, blights enterprise, or has any of the effects that certain men whom I am bound to respect have claimed for it. Irregular changes of value would, indeed, produce these results. Let gold gain three per cent in value this year, one per cent next year, and four per cent in the year following, and serious things will happen; but let it gain even as much as three per cent each year for a century, and at the test points in business life there will ensue the essential effects that would have followed if it had not gained at all.

This means that with a steadily appreciating currency the things will happen that make for prosperity. The debtor will get justice, enterprise will be safe, and wages will gain while industry gains. The *entrepreneur*, in whose behalf bad counsel has lately been given, will best do his strategic work, not with that currency which varies in value the least, but with that which varies most uniformly. If it appears that gold is likely to appreciate more than silver, and to appreciate more steadily, it is decidedly the better metal. It is not inflation on which the *entrepreneur* permanently thrives, nor is it contraction through

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which, in the long run, he suffers; it is changes in the rate of inflation or of contraction that produce marked and damaging effects at the critical points of business life.

How does a slow and steady appreciation of any metallic currency affect the relations of business classes? Does it rob borrowers and enrich lenders? Does it favor the consumers by giving low prices, and hurt producers in the same degree? Does it tax enterprise and paralyze the nerves of business? The answer is an emphatic *No*. Steadiness in the rate of appreciation of money is the salvation of business. Not by one iota can such a slow and steady movement, in itself alone, rob the borrowing class. This is a sweeping claim; let us examine it.

It is coming to be generally known that true interest is governed by the "marginal productivity" of capital. As the utility of the final increment of a commodity fixes the price that a seller can get for his whole supply, so the productive power of the final unit of capital expresses what the owner of capital can get by lending his entire supply. This earning capacity expresses itself in a percentage of the capital itself. If the final unit can create a twentieth of itself in a year, any unit can get for its owner about that amount.

In assuming that capital earns a twentieth of itself in a year, we may use a commodity standard of measurement. A grocer's capital of twenty barrels of sugar may become twenty-one barrels, and his flour and his tea may increase in a like proportion.[1] In the simplest illustration that could be given of a capital earning five per cent a year, we should assume that each kind of productive instrument in a man's possession increases in quantity, during the year, by that amount. If he be a manufacturer, his mill becomes a hundred and five feet long,

[1] I cannot here express in any completeness the "final productivity" theory of interest. It is safe to assume that it is winning acceptance. One feature of this law of interest is that the productive power of all capital tends to equal that of the marginal *social* unit of it. In the illustration I assume that all capital creates for the man who uses it a twentieth of itself in a year, and that this increase is capable of being measured in kind. A more complete statement would fully describe the unit of measurement used.

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instead of a hundred feet. It contains twenty-one sets of woolen machinery, instead of twenty. The flow of water that furnishes power becomes by five per cent more copious; and the stock of goods, raw, unfinished and finished, becomes larger by the same amount.

Of course such a symmetrical enlargement of all kinds of goods could never actually take place, for some things increase in quantity more than others. The illustration shows, however, what fixes the rate of interest: it is the self-increasing power of a miscellany of real capital. If the mill, the machinery, the stock, grow in quantity at the five per cent rate, that is the natural rate of interest on loans of real capital. The lender gives to the borrower twenty units of "commodity" and gets back twenty-one. If marginal social capital, consisting of commodity and measured in some way in units of kind, has the power to add to itself in a year one unit for every twenty, lenders will claim about that amount, and borrowers will pay it.

How does the real earning capacity of capital in concrete forms reveal itself? How does the grocer know that he can make five per cent with the final unit of capital that he borrows? Not by the fact that each lot of twenty barrels of sugar gains one barrel, that each lot of twenty pounds of tea gains one pound, and so on. If there were to be such a symmetrical all-around increase in the commodities in the man's possession, his shelves, counters, bins, tanks, would have to enlarge themselves in the same ratio. In the case of a manufacturer the mill would have to elongate itself by one foot for every twenty, as in the foregoing illustration, and the machinery and all the stock would have to grow in the same ratio. The land and the water power would have to enlarge themselves by the same constant fraction.

I have said that such a thing does not take place. The general amount of capital goods of every kind enlarges; but the enlargement is in practice computed in monetary value, and in no other way. The whole outfit becomes worth more than it was. The increase in monetary value gauges the claims of the capitalist. If the stock of goods has grown generally larger, and

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if prices have fallen, the claim of the capitalist will fall short of equalling the actual increase of the merchandise.

The increase in goods of different kinds is of course unsymmetrical. If the man is a manufacturer, his mill and his water power have probably not increased. He may have some more machinery, and he has more raw materials and more goods, finished or unfinished, than he had when he took his last inventory. If he has not more goods of these kinds, he has something that represents them; and the effect on his fortunes is as if the mill had stretched itself, and as if the machines and other capital had multiplied, all in the same ratio.

The man figures his gains in real wealth by the use of money. At the end of the year he makes a list of all his goods, attaches prices to them, and sees what the value of the stock has become by the year's business. He compares the total value in money of the goods on hand in January, 1896, with that of the stock of January, 1895. If he has bought and sold for cash only, and if during the year he has drawn for his maintenance only what he has earned by labor, the excess of value on hand at the beginning of the year 1896 informs him what his capital has earned during the preceding twelve months.

If prices have remained stable, the earnings of the capital as expressed in money will accurately correspond with the earnings as computed in commodity. It is as if the five per cent increase of the sugar and the flour of our first illustration, or of the mill and the machinery of the second, had taken place. It could then, by a sale, be converted into a five per cent increase in money. By selling the stock at its market value the merchant could realize five per cent more than the original stock cost him.

If money has gained one per cent in its purchasing power, or if prices at the end of the year are by so much lower, the inventory will show, in terms of money, only a four per cent gain. Now the real increase of concrete capital is still five per cent, and that, by the law of interest, is what the capitalist can claim in commodities. This claim is met by an actual payment in money of four per cent. Give to the capitalist, in Jan-

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uary, 1896, a dollar and four cents for every dollar that he loaned in January, 1895, and you enable him to command a hundred and five units of commodity for every one hundred that he commanded at the earlier date. You give him by a reduced monetary payment what is equivalent to the real increase of capital.

It is the increase of capital in kind that fixes the rate of loan interest. I have been careful not to claim for this part of the adjustment any unerring accuracy; for the marginal-productivity law does not work without friction. With real capital creating five and a half per cent, the lender might get only five. When, however, the play of forces that fixes real interest has had its way and has determined that, in commodity, capital shall secure for its owners five per cent a year, that amount is unerringly conveyed to them by the monetary payments that follow. If, by paying four per cent as interest, the merchant, in the illustrative case, makes over to the lender of capital that part of the increase of goods that by the law of interest falls to him, four per cent is the rate that the loan in money will bring. This is on the supposition that the change in the purchasing power of money is perfectly steady. If it is unsteady, effects will follow that are of much consequence.

In a late number of this QUARTERLY,[1] I expressed the opinion that changes in the purchasing power of a currency produce an effect on the rate of interest on loans of "money." If, with a currency of perfectly stable value, the interest on loans is five per cent, corresponding to the earnings of real capital, then a gain in the purchasing power of the currency of one per cent a year has the effect of reducing nominal interest to four per cent. The debtor then really pays and the creditor really gets the same percentage as before of the actual capital loaned. The borrower, the *entrepreneur* in the case, finds at the end of the year that he has more commodities by five one-hundredths than he had. He must pay the equivalent of this to the lender.[2] With money of stable purchasing power it takes five new dollars for every hundred to do it; but with money that

[1] Vol. x, p. 389 (September, 1895).

[2] Of course the gains of different *entrepreneurs* vary. It is the earnings of marginal social capital that really determines interest.

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gains in its power to buy goods at the rate of one per cent a year it takes only four.

Since this view was submitted, an acute critic[1] has expressed the opinion that the rate of interest on loans is, indeed, varied because of the appreciation of the coin, and that the variation is in the direction indicated; but he has claimed that the variation is not as great as the appreciation of the coin. He has cited statistics to prove that gold has recently gained in purchasing power, that the rate of loan interest has been reduced because of this gain, and that the amount of the reduction is only about a third as great as the amount of the appreciation of gold. Where the gain in the purchasing power of money would theoretically call for a certain lowering of the nominal rate of interest, the facts cited appear to show that interest has been lowered, but by a smaller amount.

Now without meeting this contention with a *tant pis pour les faits*, I propose to reassert the former doctrine, and to claim that the rate of interest on loans is, in the long run, reduced by an amount that accurately corresponds with the appreciation of the monetary metal *wherever the appreciation is steady*. This law, as I believe, works with a precision that is unusual in the case of economic laws; and I have seen no facts cited which do not seem to me to be consistent with this view. Loan interest varies more or less from the marginal earnings of capital. Interest as paid in money accurately expresses interest as determined in kind by the play of economic forces.

It is possible that, where this subject has been considered, the impression may prevail that this reduction in the nominal rate of interest is the result of foresight on the part of borrower and lender. According to that view, both parties look forward to the time when the loan will be paid. The borrower sees that, although by means of his business he may have at the end of a year five per cent more of commodity in his possession, prices will probably have fallen so as to enable him to realize in money only four per cent. On the other hand, the creditor will see that

[1] The criticism referred to was made by Professor Irving Fisher of Yale University, in a paper read before the American Economic Association, at the annual meeting lately held at Indianapolis.

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with four per cent more in money he can, if he will, buy with his principal and interest five per cent more than he virtually loaned in commodity. He is satisfied with this increase; and, moreover, he is forced to accept it, since the natural increase of real capital will not enable a borrower to pay more. The *entrepreneur* will quit borrowing if more is demanded. The whole adjustment is supposed to rest on a forecast made by the contracting parties, and a speculative calculation as to the trend of prices. Now, while men do indeed consider the future, the adjustment that is actually made does not call for foresight. No conscious forward glance is necessarily involved therein. It is made by a process that works more unerringly than any joint calculation about the coming conditions could possibly do.

The interest on a loan that is to run through a period in the near future is based on the rate that capital is now producing. The evidence as to what that rate is must be furnished by the experience of the immediate past. It takes much experience, of course, accurately to determine how much the marginal unit of capital for the year 1895 has been worth to the men who have used it. This, however, has to be ascertained as best it can. It takes strategy on the part of both borrowers and lenders to make the loan rate correspond to the marginal earnings. Here there is a chance for economic friction, and for variations from the theoretical standard. The loan rate will sometimes fall short of the marginal earnings of capital, and it will sometimes exceed it; but in the long run the deviations will offset each other. In any case, the experience of 1895 fixes, with or without variations, the loan rate for 1896.

The earnings revealed by the experience of 1895 may be theoretically computed either in money or in commodity. Let us say they have been five per cent in real wealth, but by reason of the fall in prices they have been only four per cent in money. That, then, is the rate for a loan that is to run through 1896. If prices continue to fall at the rate now prevailing, the loan rate in money will correspond to the marginal earnings of capital for the latter year as accurately as it does for the former year.

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Bargain-making strategy, the "higgling of the market," may yield an imperfect result, and the lender of real or commodity capital may or may not get the exact real earnings of marginal capital of the same kind. *In translating the earnings of real capital for the earlier or test year into terms of money, the appreciation of the coins has unerringly entered as an element.* If the same rate of appreciation is continued through the following year no deviation of the loan rate from the earnings of capital can result from this cause. Whatever deviation there is results from the other causes just noted.

In commercial terms a man borrows "money," and, by using it in his business, produces "money." He does this, however, by converting the currency into merchandise, and then reconverting this into currency. He gives to the lender approximately what the "marginal" part of the loan produces. If this adjustment is inexact, the lender will get less or more than the actual earnings of such capital. With money gaining in its purchasing power at a uniform rate, the adjustment is as exact as it would have been with money of stable value. The appreciation works unerringly in translating earnings measured in goods into smaller earnings measured in money. The loan rate approximates the earnings.

What happens if the rate of appreciation changes? What if gold gains two per cent in value, instead of one, during the second of the periods? The capitalist will then clearly be a gainer, and the *entrepreneur* will be a loser. Getting five per cent in commodity as before, the business man, by reason of falling prices, will realize only about three per cent in money. His contract, based on the experience of an earlier year, makes him pay four per cent, and he loses one. Every acceleration of the rate of increase in the purchasing power of money plays into the hands of lenders. Every retarding of that rate plays into the hands of borrowers. If in 1897 the *entrepreneur* gets a three per cent rate on what he borrows, as based on the experience of 1896, and if the fall in prices is reduced during that later year to one per cent, the borrower will make a clear gain of one per cent; and this will recoup him for his loss in the

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earlier period. Moreover, after a long period of steady prices, the beginnings of a downward trend do not instantly affect the loan rate of interest. A period must elapse sufficient to establish the fact of this downward trend, and to enable the struggles of lenders and borrowers to overcome habit in fixing a new rate that will correspond to the new earning power of monetary capital. These facts explain what at times looks like a failure of the loan market fully to take account of the fall of prices during a given interval. What that market really does is to base the interest paid in one interval on the business experience of another.

What, then, is our practical conclusion? Gold is gaining in its purchasing power; and the gain is, comparatively speaking, a steady one. Does this rise rob the debtor? In any case he must pay the marginal rate that real capital earns. If that is five per cent, five he must pay, so long as prices are stable. With prices falling by one per cent a year, he will pay only four.

Does the fall check enterprise? Does it make men afraid to buy stocks of goods? They can carry stocks as cheaply with a four per cent rate of interest and declining prices as they can with a five per cent rate and stable prices.[1]

Does it blight enterprise? Does it make men afraid to build mills, railroads, *etc.*? Here again the loan rate of interest comes to the rescue of the projectors. If they can float their bonds and notes at a lower rate, they can build with impunity.

Steadiness is the vital quality in currency. Let its purchasing power be either unchanging or steadily changing in either direction, and justice will be done and business will thrive. If silver fluctuates greatly in its rate of increase in value, it is a bad coinage metal, even though the average rate of gain be slow; if gold gains slowly and steadily, it is an almost ideally good metal.

JOHN B. CLARK.

[1] Particular kinds of goods often fall in value so rapidly as to make it perilous to buy freely; but it is a rare situation in which merchandise of all kinds does so. A rapid change from depreciated paper money to a gold standard might, however, transiently produce this latter condition. The fall in prices might be so great as to exceed the total earning capacity of real capital. Then it could not be counteracted by changes in the rate of interest.

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THE CORPORATION AS A FORM OF COLONIAL GOVERNMENT. I.

I. *The Classification of Colonial Governments.*

NEARLY a century and a half ago William Blackstone propounded his classification of English colonial governments. "With respect to their internal polity," said he, "our colonies are properly of three sorts": provincial establishments, proprietary governments, charter governments.[1] The constitutions of the first class, he said, rested on commissions issued by the crown to the governors, and the instructions which accompanied them; while the proprietary grants were of the nature of feudal principalities, and the charter governments were civil corporations. This classification has been expressly or tacitly accepted by all later writers: no serious effort has been made, at least in a public way, to improve on Blackstone's treatment of the subject. Yet it may be suggested that there are faults in the classification, which impair its usefulness and tend to conceal the true character of English colonial governments.

Blackstone was undoubtedly correct in basing his classification on the internal polity of the colonies. His inquiry was directed toward the source of power within the colony, and the way in which it was there exercised; and these are the facts which, if brought out, enable one to determine the character of a political system. For the purpose which he, or any other investigator of the subject, has in view, it makes no difference whether the inhabitants of the colonies stood in a mediate or an immediate relation to the king. The form of colonial government is not determined by the nearness or remoteness of royal control.

[1] Commentaries, Introduction, section 4.

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Still, though he had the right principle, it seems to me that Blackstone's classification is faulty in two respects: (1) The term charter government, which he has employed, is loose and inexact, and the use which he has made of it increases rather than relieves the confusion. (2) Instead of three forms of colonial government there are only two, the corporation and the province.

Addressing ourselves to the first point of criticism, a little thought should make it evident that the word charter can never properly be used to describe a form of government. The charter is a document used for the transmission of rights and powers. It was employed for this purpose by the Roman imperial government and by the papal curia, and from these sources it was adopted and came into use among the states of mediæval and modern Europe. Since its introduction by the Roman priesthood into England it has been used by the crown for the conveyance of powers in great number and variety. The grantees have been both laymen and ecclesiastics. Land and territorial privileges, rights of trade and subordinate rights of government have been bestowed by the use of this document. Some of the grants have carried with them corporate privileges; many more have not. Many have been charters of immunity, exempting the grantees from suit at court, from the payment of specified dues or from other obligations. Not a few have been charters of pardon. By charter rights both public and private have been indiscriminately conveyed. Not until the thirteenth century, says Sir Duffus Hardy,[1] does this form of document appear in distinction from the patent and deed, as the evidence of the most solemn acts of grant. It has been issued in favor not only of individuals, but also of communities; while in some instances it has contained a grant in favor of the whole kingdom. Only a reference to the Charter of Liberties of Henry I, to the Charter of Forests, to *Magna Charta*, is needed to indicate the exalted public uses to which this instrument was put in mediæval England.

[1] Rotuli Chartarum, in Turri Londoniensi, Introduction. English Record Commission, 1837.

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These familiar facts, and many others which might be cited, show that the word charter conveys no definite idea about the kind of powers transmitted, or the way in which they are exercised, or the source whence they come. It has reference solely to the kind of document used in the transmission. If used to convey powers to a municipality, it alone would not distinguish the rights thus bestowed from a grant of privileges to a baron, to a bishop, to a monastery; or, in later times, from those granted to a trading company or a bridge company. Therefore it would seem that the word charter, as a descriptive term, has no proper place in a classification of forms of government. It conveys an idea no more precise or germane to the subject than would the word constitutional, if used in a similar connection or for a similar purpose.

Moreover, Blackstone uses the term arbitrarily. When the crown employed agencies in the work of colonization, powers and rights were conveyed to them by charter. Two such agencies were employed, the corporation and the proprietor. Both received charters. The proprietary province originated through the delegation of powers by charter just as truly as did the corporation; and if the term charter government is to be used as descriptive of the one, why should it not be so used of the other? But that cannot be done, for it would confound two systems of government which are essentially unlike. Blackstone's definitions show that he was aware of this unlikeness: the one system, he said, was of the nature of a feudal principality, while the other was a civil corporation. Possibly it was for this reason that he confined the term charter government to the corporation. But the fact that, if used at all, its meaning must be arbitrarily restricted, furnishes another argument for its rejection.

In support of the second objection to Blackstone's classification I shall attempt to show in this and in subsequent papers that there are but two distinct forms of colonial government in the English system, the corporation and the province. Under the corporation I include those colonies which themselves became corporations. There were three such, and

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only three — Massachusetts, Connecticut and Rhode Island. They form a class by themselves, and through their organization and development give character to the history of New England. Under the term province I include all the other colonies — those which were founded and controlled by trading companies resident in England, as well as those settled by proprietors and those which were governed directly by the king. In drawing this line of distinction, imperial control as such has been left out of sight. So far as possible attention has been strictly confined to the internal organization of the colony. In the case of the corporations this can easily be done, for they were by nature essentially independent and self-sufficing. The proprietor, and the company considered as a proprietor, were in a certain sense distinct from the colony, though constituting a most important part of it, and transforming it into the province. They existed prior to the colony and derived their authority from a source outside of it. Though their prosperity depended on its growth, their rights and privileges descended, in the one case to heirs and assigns, in the other to successors, and that independently of the colony. They were intermediaries between it and the king, and thus had relations which the colony had not. The relations between proprietors and the king, or the way in which control over the proprietors was exercised, it is not my purpose to discuss in this connection. To the relations between the proprietor and the province, and to these alone, is the reader's attention now invited.

While the power of the proprietor was coterminous with his proprietorship, the kingly office was vastly higher and more inclusive. When America was settled the King of England was the possessor of three crowns. Potentially, then, he was emperor; and as the dominions across the sea increased in number and extent, the imperial element in the office became more prominent. But this monarch was at the same time the proprietor of a number of American provinces. It is in his proprietary relation to them, and to each of them separately, that his position will be discussed in these papers. It

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will then be seen that the king occupied toward each of these dominions a position similar in all respects to that held by the proprietors toward their respective provinces.

II. *The Colonial Corporation.*

In order to trace the origin of the colonial corporation it is not necessary to go back beyond the companies of Merchant Adventurers which, in the late sixteenth and early seventeenth centuries,[1] were created by royal grant in considerable numbers. Each of these companies received exclusive rights of trade with a specified region or stretch of coast with which Englishmen had established, or hoped to establish, commercial relations. The Muscovy Company, the Levant Company, the Eastland Company, the Guinea Company, and others of their class, are more or less familiar to students of English commercial development in the age of the Tudors and Stuarts. But of them all the East India Company was the one destined to have the greatest career, and to become in the popular mind the representative and type of the class. A reference to its organization under the first charter will furnish a clue to the line of investigation which must here be followed.

The patentees were by the charter of 1601[2] incorporated under the name of the "Governor and Company of Merchants Trading into the East Indies." They had the right to increase their number by the admission of freemen to the "fellowship." General administrative power was intrusted to a governor, or deputy, and twenty-four elected members, called the committee. The first governor (Sir Thomas Smith) and the first members of the committee were named in the charter and were to hold office for one year. Thereafter they were to be elected yearly

[1] For the evolution of Merchant Adventurers' Companies from the Gild, see Gross, Gild Merchant, vol. i, pp. 125 *et seq.*, and literature there referred to. Important documents are printed in Schanz, Englische Handelspolitik, vol. ii. Busch, in England unter den Tudors, vol. i, treats briefly but suggestively the earlier history of the Merchant Adventurers.

[2] See Charters and Grants of and to the East India Company, a volume apparently issued by the company itself, but without date. (Astor Library.)

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by the company, and when chosen were to take an oath of office. Provision was also made for a general court, consisting of all the members of the company who might attend, to meet for the purpose of electing officers and transacting the general business of the corporation. In this court the governor or deputy must always be present; and when organized with one of these officials at its head it was the source of authority within the company. By the charter of 1609 no changes, save in details, were made in the plan of organization. This plan, as will be seen, was substantially the same as that upon which the most important companies engaged in American colonization were formed; but a comparison between their charters and that of the East India Company will reveal at once the wide difference in the purpose for which they were created. In the case of the East India Company trade is expressly stated to be the object; and although the power to buy, hold or dispose of land is given, the exercise of that right is wholly subordinated to purposes of traffic. Governmental powers, save in the very limited form necessitated by the character of the grant, were not bestowed.

So far as form of organization is concerned, the English companies which were engaged in the colonization of North America subsequent to 1609 were, with one exception, similar to the East India Company. In fixing the boundary line at 1609 the intention is to exclude from this class the grant of 1606 to the London and Plymouth patentees, while the company referred to as an exception is the New England Council of 1620. Let us now trace somewhat in detail the evolution of these corporations, for the purpose of comparing the forms which appear, and of thus clearing the way for the study of the corporate colony. I shall begin with the grant of 1606 in order to show its extraordinary and essentially transitional character, and by so doing to gain the correct point of view for the later investigation.

Of the grants affecting North America those made by the English crown previous to 1600 were mainly for purposes of discovery. They were rudimentary, and for the most part proprietary in form. With the grant of 1606 the first attempt

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was made by the crown to regulate somewhat in detail the settlement and government of a colony. What was the result? Two groups of patentees, most of whom were or had been soldiers, one group resident at London and the other at Plymouth, were the recipients of the grant. They are called in the charter "the first colony" and "the second colony," respectively; also "adventurers"; while under the name of "associates" they were permitted to admit others to a share in the enterprise. None of the usual words of incorporation appear in this charter; and the only evidence which I have been able to find in the document itself that the grantees were incorporated is the name "colony," which is given to each group, and the use in the preamble of the word "companies," this referring also to the patentees. In the first set of instructions issued by the king concerning this enterprise — and the only set preserved[1] — it is said that the king had "given license" to sundry of his "loving subjects", and "to their associates," "to deduce and conduct two several colonies or plantations" of settlers to America. Here the word colony is used in its ordinary meaning, and not in what would appear the unusual sense of the name of a corporation. The records of the acts of these patentees are not extant. So far as observed none of the contemporary references to them give decisive information upon the question as to corporate capacity. If, then, these companies were corporations, as they have generally been considered to be, and as they probably were, the positive evidence of the fact is slight. If Sir Edward Coke drew this patent, he certainly put into it the very fewest words that were necessary for the conveyance of corporate power.[2]

[1] Alex. Brown, Genesis of the United States, vol. i, p. 65.

[2] Capt. John Smith, who claims to have aided in procuring this charter, calls the patentees a "company." See New England's Trials, 2d ed., in Arber's edition of Smith's Works, p. 266. Gorges, in his Brief Narration, always refers to them under the name of colony. See Baxter, Gorges and his Province of Maine, vol. ii, pp. 12 *et seq.* But when in 1619 a dispute arose between the Plymouth patentees under this charter and the London Company as it then was, the former were referred to as a company both by Gorges and by Sir Edwin Sandys. Colls. Va. Hist. Soc., vol. vii, p. 27. The Turkey or Levant Merchants were first chartered as a partnership (1581), and in 1592 were incorporated. Hakluyt, Collections, vol. ii, pp. 263, 434.

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Coming to the rights and powers granted in 1606, we find that the grant of land was made in form similar to that used in the charters of discovery. It was a grant of permission to settle within a specified territory. The choice of a place for actual settlement was to secure to the patentees the possession of a tract one hundred miles square, so located that the settlement should lie at the middle of the eastern or coast line of the tract.[1] Since with two groups of patentees presumably at least two colonies would be established, and since a middle region three degrees broad was left open to their joint settlement, the further provision became necessary that the colonies should be placed at least one hundred miles apart. But this bestowment of land was not made in such way that the patentees could grant it out to settlers. In the eighteenth and nineteenth clauses of the charter it was provided that such grants should be made by the king through letters-patent under the great seal, and to those persons in whose behalf a petition should be presented by the council of the colony in which they were resident, or with which they were connected. This provision, we may suppose, was introduced with a view to the maintenance of the communal system, both of trade and agriculture, which we know was kept up for several years at Jamestown, and which the instructions show the king to have commanded and approved.[2]

Another peculiarity of this system was that, although the right to transport settlers and their supplies into the colonies, with the power to defend them, was given to the patentees, the right to trade with them was given only by implication, and that not to the exclusion of outsiders.[3] But of special importance is the fact that by the charter of 1606 no governmental powers whatsoever were bestowed on the grantees. Instead, provision was made for three councils, one resident in England and one in each of the two colonies. The first was called the

[1] Islands within one hundred miles of the coast were also granted.

[2] Brown, vol. i, p. 71.

[3] See articles eleven to fourteen of the charter as printed in Stith's History of Virginia.

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Royal Council for Virginia. Its members were appointed by the crown. The charter provided that they should be thirteen in number, but the first instructions reveal the fact that there were fourteen, and by a royal ordinance issued in March, 1607, the number was increased at the request of the patentees to forty, or perhaps more.[1] In both these documents, also, it was stated that the king might increase or change the membership at will. This council was then his creature, though, so far as is known, its members were patentees. Each of the other two councils consisted of thirteen members, appointed by the Royal Council under instructions from the king, but endowed with the power to choose their own president. They likewise, being planters, were either patentees or closely connected therewith.

Through these three bodies the king governed the colonies. Each council had a seal, which was the seal, not of the patentees, but "of the king for his council." To the Royal Council was given control "of and for all matters that shall or may concern the government," not only within the colonies, but throughout the territory between the thirty-fourth and the forty-fifth parallels. To the local councils was given power to regulate the internal affairs of the colonies in pursuance of such instructions as should be issued for them under the sign manual and privy seal of the king. The oath which was formulated for the president of the local council contained a promise of fidelity not to the patentees, but to the king.[2] The king himself prescribed what judicial powers the local council should exercise and how they should be exercised, decreed what punishments should be inflicted for the more serious offenses, and authorized the president to reprieve but not to pardon.[3] Thus the colonies were to be governed under the immediate direction of the crown, and through bodies which in origin and function were distinct from those to which the charter was granted.

As soon as the scheme was put into operation, the king and his councils appear to have carried their interference even

[1] Brown, vol. i, pp. 66, 92 93. [2] *Ibid.*, vol. i, p. 78.
[3] *Ibid.*, pp. 69 *et seq.*

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beyond the sphere of government, and to have controlled the work of colonization to a most important extent. The writings of John Smith and others show that the council at Jamestown regulated all the affairs of the settlement, economic as well as governmental. This was, in fact, unavoidable, because of the communal system which prevailed there and of the great importance which, under such conditions, attaches to matters of an economic and social character. The king prescribed the mode of carrying on trade; the Royal Council ordered Captain Newport to spend two months in discovery, and to load his ships with products of the country for their return voyage; while under the form of "advice" it gave minute instructions about the selection of a place for settlement, the building of the town, the work of exploration, and the opening of relations with the Indians.[1] In the charter the councils were empowered to discover and operate mines, and to issue a coin for use in the colonies. Thus, under the charter of 1606 the organs of government tended to draw to themselves the entire control of the enterprise. If that had been fully carried out, a royal province or provincial system must have been the result. In that case, had a number of colonies been founded, the Royal Council might have developed into a board of general control subordinate to the Privy Council.[2] As we shall see, affairs did not develop in that direction; but in some direction they had to develop, for the system of 1606 was confused and without self-consistency. If a corporation was then actually created, it was not endowed with powers sufficient to enable it to accomplish its purpose. If, on the other hand, the object was to create a royal province, of what use were the patentees? This unnatural union was soon broken, the corporate principle triumphed, and a self-consistent system was the result.

[1] Brown, vol. i, pp. 71, 79.

[2] When, in May, 1625, Charles I proclaimed the establishment of a royal provincial system for Virginia, he announced that the control over its affairs would be intrusted to a council of his own appointment in England, and to another subordinate council resident in Virginia. A comparison of this with the charter of 1606 will show how strongly provincial was the system created by that document. Rymer, Fœdera, vol. xviii, p. 72.

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The change was effected through the charters of 1609 and 1612. By the former the process of incorporating the London patentees was completed. By the strongest possible words of incorporation they were made "The Treasurer and Company of Adventurers and Planters of the City of London for the first Colony in Virginia." All who were at that time adventurers were named in the patent. The seal was now to be the company's seal. A territory four hundred miles broad, and extending through the North American continent, was granted to the company, with power to grant the same under its seal to adventurers and settlers. The authority to transport emigrants, to carry on trade, to defend the territory, even with the enforcement of martial law in cases of mutiny or rebellion, was renewed. The company also received the organization necessary for the exercise of such powers. Provision in the first place was made for a treasurer and his assistant, the deputy-treasurer. The former was not only empowered to call the meetings of the company, but, as the records show, was in all matters its executive head. He presided at its meetings, carried on much of its correspondence, managed the important business which it had to transact with the crown, made annual reports to the company concerning all its transactions for the year, and laid before it plans for future enterprises. To guide the policy of a large corporation like the London Company, engaged in so difficult an enterprise as it had undertaken, was enough to tax heavily the powers even of such men as Sir Thomas Smith and Sir Edwin Sandys. In addition to the treasurer and his deputy there was a corps of subordinate officials, such as would be found in any large business house — auditors, a secretary, book-keeper, cashier, husband and beadle. Provision also was made in the orders of the company for numerous special and standing committees.

Since the more important of these offices were elective and since the incumbents acted by advice and under authority, periodical meetings of the company were necessary. Provision was made in 1609 for a court, and its organization was completed in 1612. It was called the "great and general

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court," and met quarterly during the law terms. It was, or might be, attended by all the members of the company, both the officers and the "generality." In this court by majority vote, and in most cases with the use of the ballot, the officers of the company and of the colony were elected. It was also the ultimate source of authority within the company. To it all matters were, or might be, referred for final decision, and the records bear evidence that a large amount of business was done in the general court during the later years of the company's history. Provision was also made for ordinary courts. These usually met once a fortnight, and must be attended by at least five councillors and fifteen of the generality. They were called by the treasurer, and were "sufficient for handling . . . all such casual and particular occurrences . . . as shall from time to time happen touching and concerning the said plantation." Every Monday before the meeting of the general court the ordinary court met to prepare business for it. This session was commonly known by the name "preparative court."

Up to this point I have been describing the organization of the London Company for business purposes. What provision was made respecting the exercise of governmental powers? The Royal Council of the charter of 1606 was retained under the name: "Our Council for the said Company of Adventurers and Planters in Virginia."[1] From the records we learn that it had a seal. Upon it governmental powers were bestowed. In 1609 it was authorized to establish offices and determine their titles, to provide forms and ceremonies of government, to appoint officers, to issue such orders and instructions[2] as were necessary for government within the colony and on the outward and return voyages. These it might change or revoke. The councillors were to take the oath of office before the lord chancellor, the lord high treasurer or the lord chamberlain. The first set of councillors — all patentees — was named in the charter.

[1] Orders and Constitutions, p. 10. Reprinted in Force's Tracts, vol. iii; Records of Va. Co., vol. i, p. 133.

[2] See also Orders and Constitutions, p. 10.

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So far there had apparently been no deviation from the earlier system.[1] But provision was made in the charter of 1609 that vacancies in the council should be filled by the company. By this process the council must in time become the creature of the company. This seems in fact to have been the method by which the corporation came into possession of governmental powers. The effect of this upon the council was to make it the permanent administrative body within the company.[2] The treasurer or deputy called it together,[3] and the former was the custodian of its seal. The *Records* and other authorities show that the council sent instructions[4] to the governors, and that with the treasurer it carried on much of the company's correspondence.[5] When charges were made against officials, as Governor Argall, it held preliminary hearings, and prepared the case to be laid before the general court.[6] It examined standing orders, which it was proposed to put into force in the colony, before they were presented to the king for his approval.[7] It considered proposed changes in the patent, and in general all business in which the king was likely to be concerned.[8] It deliberated upon the tobacco question, and the rate of salaries to be paid to officials in Virginia.[9] A part of the council was appointed

[1] "First you shall understand that his majesty hath granted us an enlargement of our charter with many ample privileges, wherein we have knights and gentlemen of good place named for the King's Council of Virginia to govern us." "Nova Britannia," p. 23, in Force, Tracts, vol. i.

[2] Evidence that the *personnel* of the council soon began to change, and that it came to occupy the position here described, appears in articles 6 and 7 of the charter of 1612, as printed in Stith's Virginia. In the Records appear occasional instances of election of members to the council by vote of the company. Colls. Va. Hist. Soc., vol. vii, pp. 46, 106, 120.

[3] Charter, article 10; Orders and Constitutions, p. 9.

[4] The Orders and Constitutions state that "all instructions to the governor and council, and all other principal officers in Virginia, shall proceed from the council, and under their hand and seal, . . ."

[5] Brown, Genesis, *etc.*, p. 488. Complaint was made in 1619 against Governor Yeardley because he directed all his letters to the council and none to the company. Colls. Va. Hist. Soc., vol. vii, pp. 48, 53; also 168, *etc.*

[6] Colls. Va. Hist. Soc., vol. viii, pp. 29–38, 45, 47.

[7] *Ibid.*, vol. vii, pp. 33, 86.

[8] *Ibid.*, vol. vii, pp. 17, 98, 109, 113, 186, *etc.*; vol. viii, pp. 23, 46.

[9] *Ibid.*, vol. viii, pp. 68, 96; vol. vii, pp. 112, 119.

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on a committee to prepare the acts of the first Virginia assembly for final consideration by the company.[1] It issued broadsides, relations and the other publications of the company.[2] The "Orders and Constitutions," in fact, state that at the call of the treasurer or his deputy the council should meet and give faithful advice in all matters tending to the advancement of the plantation, and especially concerning the making of laws and constitutions. The religion of the colonists and the conversion of the natives were to be its peculiar care. Sometimes committees were associated with it, or prepared business for it. Sometimes the council reported to an ordinary court,[3] instead of laying matters directly before the quarter court. So important was the council that the whole organism usually went by the name: The Treasurer, Council and Company.[4] But the evidence contained in the *Records* abundantly proves not only that the corporation directly exercised governmental power, but that it was the source whence that power was immediately derived.[5] The "Orders and Constitutions" also clearly show that in the quarter courts officers were to be elected, laws and ordinances passed, lands in Virginia disposed of, and all matters of trade settled. These constitutions say:

[1] Colls. Va. Hist. Soc., vol. vii, p. 56.

[2] Brown, Genesis, *etc.*, pp. 337, 439, 445, 463, 761, 775, 797. The more important pamphlets concerning the early history of Virginia, which have been reprinted by Force in his Tracts, were published by order of the council. "Nova Britannia" was addressed to Sir Th. Smith as treasurer and one of the council. Force, vol. i. See Smith's Works, Arber's edition, p. 522, "A Declaration of the Lottery published by the Council." Smith, when he was apparently preparing his Generall History, received for his enterprise the commendation of the company. Colls. Va. Hist. Soc., vol. vii, pp. 113 *et seq.*

[3] Colls. Va. Hist. Soc., vol. viii, p. 96. The only record we have of a session of the council relates to that held in December, 1622, to inquire into the cause of the denunciatory language used by Mr. Wrote against the treasurer and deputy because of their alleged misconduct in relation to the famous tobacco contract. A report on this was made to the company, and it excluded him from the council and suspended him from membership in the corporation. Colls. Va. Hist. Soc., vol. viii, pp. 48–55, 73, 82.

[4] *Ibid.*, vol. viii, pp. 24, 26, 786, *etc.*

[5] The letters printed in Neill's History of the Virginia Company, pp. 223 *et seq.*, also prove that, at least in the later years of its history, the company corresponded freely with the authorities in the colony, and they with it. Waterhouse's Relation, concerning the massacre of 1622, was dedicated to the company. Neill, p. 334.

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No laws or standing orders shall be made by the company but in this manner: First, after the proposing of them in court, they shall be referred to the examination of a select committy. The committies shall present their labors to the view of the council. The council approving them, they shall be brought to the court of preparation on the Monday before the quarter court and openly read. And lastly, they shall pass the judgment of the quarter court.

We have now seen what the London Company was in its fully developed form. It was a body politic endowed not only with land and rights of trade, but ultimately with powers of government, and with the right to increase at will its own membership. This we may call the London type of company, which had developed out of the system of 1606 by the merging of the council in the corporation.

We come now to consider an organization of a different type. The Plymouth patentees of 1606 continued under the old charter till 1620. During the interval colonization was attempted by them at Sagadahoc and failed: thereafter only fishing voyages and voyages of discovery were undertaken. Finally, some of the patentees asked for a definite grant of territory and incorporation as his "majesty's council," the number of which should never exceed forty.[1] The request was granted, and the result was the formation of a new company under the name: "The Council established at Plymouth in the County of Devon for the Planting, Ruling and Governing of New England in America." The strongest words of incorporation were used, and the territory between the fortieth and forty-eighth degrees of north latitude, and extending through the continent, was bestowed, with power to grant it out to settlers. The customary rights of settlement and trade were given, though in a somewhat detailed and monopolistic form. Powers of government were also bestowed, and in much the same language as was used in the London charter of 1609. The right was given to constitute offices, to abolish or change the same, to appoint and remove officials, as well those in England as those employed in the colony, and to issue instruc-

[1] N.Y. Col. Docs., vol. iii, p. 3.

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tions for the guidance of magistrates in New England. An official oath was to be formulated for administration to those in the plantation service, and also a judicial oath to be used in examinations touching the plantation or its business.

But the New England council is interesting in the present connection chiefly because of its name and its organization. In name it was the same as the Royal Council for Virginia. In number of members the two were not unlike. The members of both were required to take an oath of office before the lord chancellor, the lord high treasurer or the lord chamberlain. In both cases they were the grantees of governmental powers. But in the London system of 1609 the council, though originally distinct, became merely a part of the corporation, losing thereby its separate existence. In the New England system the council was the corporation, and thus was the grantee of all powers. The two were closely joined, as they were under the London charter, but the corporation was merged in the council, the latter holding the chief place and giving character to the system. This council, then, like the council in the London Company, was the body to which the king addressed his instructions, if he had any to give. Its relation to the king and the privy council was direct. Its relation to the colonists was also direct, and it did not share the work of administration with the corporation, for it was the corporation.

The last distinction to be noted between the New England Council and the London Company is this: the council was a closed body, limited to forty members. Vacancies were to be filled by coöptation. It never could become, then, a large and dignified body, like that which met at Sir Thomas Smith's and John Ferrar's. Its records,[1] so far as they have been preserved, show that rarely more than half a dozen members attended its meetings. The only two who were regularly present were Sir Ferdinando Gorges and Dr. Barnabee Gooch. Though the council was located at Plymouth, its meetings were usually, if not always, held in London. These meetings were not called general courts, and were not such, for this

[1] Proceedings of the American Antiquarian Society, 1867.

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corporation had no generality. There were no ordinary courts. The only executive officer mentioned in the charter is the president. He was elected by the body he served and from its members. His duties, so far as they appear in the charter, were to call meetings of the council and to assist in administering the oaths. The records show that the title of the office was later changed to governor;[1] and, when Sir Ferdinando Gorges held the position, we may believe that the policy of the council was directed by its official head. The records also reveal the fact that the council had a treasurer — for a time, Dr. Gooch — a clerk and auditors; and show that committees were appointed to facilitate its work.[2] A body so small as the council needed but little administrative machinery. But as time passed it became even smaller. In November, 1632, its members had been reduced from forty to twenty-one,[3] and it was resolved that the number "be with all convenient speed filled"; but there is no evidence that this was done. The New England patentees, moreover, were nobles and country gentlemen of the west of England — landed proprietors; the merchant element was almost wholly lacking. As the attendance and membership fell off, the council became more and more like a board of proprietors. Because its membership was limited to forty, and none of those intended ever to settle in New England, all the colonists under this system must be tenants or simply inhabitants. They could never become members of the governing body. The council, in other words, could never expand into a commonwealth. On the other hand, year by year it degenerated toward a proprietorship; and in fact that was the governmental form which it most resembled, and toward which the inclinations of its members naturally gravitated. In the manifesto of the council issued in 1622, and commonly known as Gorges's *Brief Relation*, the monarchical theory of government was strongly asserted, and a scheme of administration outlined which was clearly provincial, *i.e.*, monarchical in its character.[4] The language of the document is as follows:

[1] Records, p. 59. [2] *Ibid.*, pp. 59, 60, 62. [3] *Ibid.*, p. 110.
[4] Baxter, Gorges, vol. i, pp. 234 *et seq.*

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As there is no Common-wealth that can stand without government, so the best governments have ever had their beginnings from one supreme head, who both disposed of the administration of Justice, and execution of publike affaires, either according to lawes established or by the advice, or counsell of the most eminent, discreetest, and best able in their kinde.

After a brief description of the administrative organization of England, the writer continues:

This foundation being so certaine, there is no reason for us to vary from it, and therefore we have resolved to build our Edifices upon it, and to frame the same after the platforme already layd, and from whence we take our denomination.

Then follows the sketch of a governmental system which is English and feudal in every point.[1]

When, in 1622,[2] the procuring of a new patent was under discussion by the council, it was proposed to change the grant into a proprietorship. "Not to make a corporation," it was said, "but to take the land to us and our heirs." When ten years later the question of a new patent came up again, it was agreed that a copy of the charter for Maryland, recently granted to Lord Baltimore, should be given to Sir Henry Spelman for his use in preparing the draft.[3] The grants made by the council were in nature feudal principalities, and this was the form given to the division of its territory when it resigned its charter in 1635.[4]

Such were the characteristics of the London Company and the New England Council. Both were corporations, pursuing kindred objects. Both developed out of the system of 1606: the former by emphasizing the element of the business corporation,

[1] In this connection it is also worthy of note that in the patent issued in 1621 to John Pierce and his associates of the colony of New Plymouth, a rent of 2*s*. for every hundred acres of land granted was reserved by the council. This sum was to be paid annually to its "rent gatherers." 4 Mass. Hist. Coll., vol. ii, p. 160. A similar provision appears in other patents issued by the council. See Records of the Council, pp. 97–105. See also Jenness, Docs. relating to New Hampshire, p. 12. [2] Records of Council, p. 66. [3] *Ibid.*, pp. 68, 90, 111.

[4] A list of these grants is given by Samuel F. Haven in Massachusetts and its Early History (Lowell Institute Lectures), p. 152. A less complete list is in Palfrey, vol. ii, p. 397.

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which was only germinal there; the latter by continuing that of the governmental council in great prominence, carrying on, that is, to another stage of development the conciliar side of the system of 1606. The one, true to its nature, was an open body, admitting shareholders freely and without limit; the other, also self-consistent, was a closed body, becoming smaller as time passed. The one was able to command large capital and much of the best energies of the nation; the other was poor and unsuccessful from the outset. The one, for reasons largely beyond its control, was destroyed by the crown; the other voluntarily resigned its charter. It was possible for a corporation organized according to the London plan to expand into a colony or commonwealth. This could be done, providing it were properly located, by the admission of new members and by a modification of its aims and policy. But a corporation organized like the New England Council could do no such thing. If it attempted this, it must be as a board of proprietors resident in the colony.

In reviewing the development of colonial government, we have now reached the time when the corporation was to be merged in the colony. This was effected in one case, that of Massachusetts, by the transfer of the corporation to the colony; and in the other cases, those of Connecticut and Rhode Island, by the creation of corporations on the place. The development of colonizing companies within England was at an end. We have found two types, and no others were produced. The Georgia Trustees were a corporation organized after the London pattern; but, since they remained resident in England, their colony was, as we shall see, in essentials proprietary. When it later appeared desirable to create a corporation which should become one with the colony, it is not difficult to see which of the two existing types would be selected.

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FOUR GERMAN JURISTS. II.

BRUNS, WINDSCHEID, JHERING, GNEIST.

V. (*Continued.*)

JHERING'S next attack upon "abstract" legal theory was directed against the current explanation of the protection accorded by Roman law to the possessor as such, whether the possession be rightful or wrongful, honest or dishonest.[1] The German literature of this century on the law of possession is very extensive: when, in 1889, Jhering returned to this field, his second book[2] was at least the thirtieth treatise on possession that had appeared since Savigny's — doctor dissertations and review articles not included. The English literature can show, within the same period, but one important work on this branch of the law.[3] Why the German mind has been so fascinated — not to say possessed — by this subject is a curious question. In his *Possessory Intention* Jhering hazards the conjecture that it is the imperfect juristic development of the doctrine that attracts the constructive jurist. Possession is inarticulate, "the mollusk of legal institutions"; it is so "soft and flexible" that the jurist can make of it what he wishes; it is "a rubber figure."[4] Here Jhering is less happy than usual in his similes. The *corpus* of possession, the power of control, is a matter of fact; the law of possession has grown up about this hard central fact; and the constructive jurist is attracted not by the ease with which this legal institution can be moulded into logical form, but, on the contrary, by the resistance which it offers to his processes.

[1] Grund des Besitzesschutzes (1868). First published in *Jhering's Jahrbücher*.

[2] Besitzwille (1889). A third and less technical treatise on the subject is to be found in Jhering's article, "Besitz," Handwörterbuch der Staatswissenschaften (1890–92), vol. ii; reprinted in *Jhering's Jahrbücher*, 1893, pp. 41–98.

[3] Pollock and Wright, Possession in the Common Law (Oxford, 1888).

[4] Besitzwille, pp. 284, 285.

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There is, however, a good bit of truth in Jhering's statement that the doctrine is imperfectly developed. It was imperfectly developed *in the Roman law*, as is shown by the sweeping changes introduced by mediæval practice and modern legislation. Whether the protection of possession at Rome originally represented the natural reaction of civilized society against the assertion of rights by force, or began in the protection accorded to the occupants of the public lands,[1] the Roman law was steadily working towards a broader principle than the discouragement of self-help, or the defense of the established state of things. In the light of the modern European development, and of the independent but similar results reached in the English law, the goal toward which Roman law was tending seems to be the protection of possession under any sort of title against every other title that is no better than that of the possessor, with the premise that naked possession is itself a title. "Every sort of possessor," says Paulus, "by the very fact that he is possessor, has more right than one who does not possess"; and Ulpian illustrates this statement by saying that the robber who, being asked why he possesses, will only answer, "Because I possess," and will not pretend that he has any color of title, possesses "by title of possession."[2] The principle of relativity of title is recognized in the *actio Publiciana* and in the *condictio possessionis*, for in neither of these actions has the plaintiff to show a good title, but in the first only a color of title, and in the second only that possession has passed from him to the defendant *sine causa;* and in both

[1] The occupants or possessors of *ager publicus* were legally mere tenants at will, holding at the sufferance of the state. In practice their holdings were permanent, were capable of conveyance and devise, and passed to the heirs *ab intestato*. Niebuhr, Römische Geschichte, vol. ii, pp. 150 *et seq.;* Marquardt, Römische Verwaltung, vol. i, p. 155; vol. ii, pp. 98 *et seq*. Niebuhr first suggested that the possessory interdicts were devised for their protection. Dernburg, Entwickelung und Begriff des juristischen Besitzes (1883), has given an elaborate development to Niebuhr's idea. Against Dernburg, Jhering, Besitzwille, p. 124.

[2] "Qualiscumque enim possessor hoc ipso quod possessor est plus iuris habet quam ille qui non possidet." D. 43, 17, 2. "Pro possessore vero possidet praedo, qui interrogatus cur possideat, responsurus sit 'quia possideo' nec contendet se heredem vel per mendacium, nec ullam causam possessionis possit dicere." D. 5, 3, 11, § 1, 12, 13 pr.

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actions the defendant wins if he can show a title as good as the plaintiff's. The same principle is partially recognized even in the possessory interdicts, in that the possessor who has obtained possession by force or stealth or revocable permission (*aut vi aut clam aut precario*) has legal relief, in case of arbitrary encroachment or annoyance, against every adversary except the person whom he has ejected, or by whose permission he holds.

But the principle is not fully worked out. The possessory remedies are not granted to all possessors. They are granted to the possessor who thinks himself owner, and to the possessor who knows that he is not. They are granted to the holders of life estates and of perpetual leaseholds, *i.e.*, to all persons holding under such titles. They are granted even to the person "in possession" of a right of way. They are granted to the pledgee in possession and to the stakeholder.[1] They are denied to the ordinary lessee and to the ordinary bailee. Lessees and bailees have not even the relative protection accorded to the tenant-at-will, who is protected against every one except his grantor. Lessees and bailees are mere "natural" possessors, or, as the modern writers call them, "detentors." They have not "juristic" possession. If disturbed or ejected by the lessor or bailor, they have no action except for breach of contract. If disturbed or ejected by others, they must look for protection to the persons for whom they were holding.

In the interdict procedure, moreover, the principle of relativity of right is only faintly developed; the dominant idea seems to be the discouragement of self-help. To this idea, it seems, is to be attributed the exclusion of the so-called *exceptiones petitoriae*, *i.e.*, the barring of all plea of right on the part of the defendant. When the possessor seeks relief against arbitrary encroachment, or other disturbance, the defendant cannot allege ownership or any other substantive right; he can only plead that the plaintiff's possession, as against him,

[1] *Sequester:* person with whom property is deposited pending determination of its ownership.

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the defendant, is "faulty," because the plaintiff has derived possession from him *aut vi aut clam aut precario.* When the plaintiff seeks relief against a forcible ejectment, even this defense is barred. He who has been forcibly ejected is to be restored *because* he has been forcibly ejected. That he had previously ejected his adversary is immaterial; his adversary should have appealed to the law for relief.[1]

Leaving the realm of Roman law and entering that of Roman theory, it should be noted that the Roman jurists declared that possession is acquired and held *animo et corpore.* To be possessor, one must intend to possess; he must have the *animus possidendi;* and he must also have the *corpus;* that is, he must be in control. When possession is held for us by others, — slaves, children or free agents, — we possess *animo nostro, corpore alieno.* Paulus utilizes the *animus* theory to explain the denial of possessory remedies to lessees and bailees. Since these persons intend to hold for the lessor or bailor, and not for themselves, they are not legally possessors.

Starting with these rules of the Roman law and these *dicta* of the Roman jurists, the German jurisprudence of our century has striven to discover the essential nature of that "juristic" possession which the law protects, and the fundamental idea which underlies the protection. It is not wonderful that the task has been found arduous. To an outsider it seems a trifle singular that so many lawyers should have employed their time in such a quest. Why not admit that the Roman distinction between "possession" and mere "detention" is historical, and to some extent arbitrary, and that the protection accorded to possession rests on more than one basis. The answer is, I think, that philosophy instinctively seeks, even in the case of social institutions, a single central idea, a simple and comprehensive explanation, and that the German jurists are nothing if not philosophical.

[1] So in the Justinianean law. In the *Edictum perpetuum* of Hadrian this rule applied only where the second ejectment was accomplished by "armed force" — "hominibus coactis armatisve." The ejected possessor had the right to use ordinary force for the recovery of possession. *Cf.* Lenel, *Edictum perpetuum*, § 245.

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Savigny found the central idea of juristic possession in the *animus domini*, the intention of holding against all the world. The lessee and bailee, as Paulus had already said, are not possessors, because they are holding for the lessors and bailors. It is, of course, true that the pledgee and the stakeholder and the tenant at will, who have no *animus domini*, have the possessory actions; but these are anomalies. The ground for the protection of possession Savigny found in the fact that all violence (*Gewaltthätigkeit*) is illegal. This expression leaves it unclear whether he regarded disturbance of possession as illegal because it is an offense against the public order, or because it is an invasion of a private right. Other passages in his treatise indicate that he leaned to the latter theory. The right invaded is not the right of possession, for possession is a fact, not a right;[1] it is the freedom of the person that is attacked, and the protection given to the possessor is "a protection of the personality." Gans gave to this idea a strictly Hegelian expression, asserting that "the will *an sich* is something substantial, something to be protected," and that "the particular will has to yield only to the higher universal will." In various shadings this explanation has been generally accepted; and the central idea of possession, and the ground of its protection, have thus been brought into most satisfactory harmony. The decisive element in possession is the will, and possession is protected because the law respects "the realized will." So Windscheid explains that the distinction between the different kinds of possession "depends upon the possessor's state of mind"; and that "that possession which is associated with the will to have the thing for one's self, which is the realization of the will to appropriate the thing," is legally protected because "the will which has made itself actually valid in this possession is as such, without regard to the rightfulness of its content, worth just as much as any other

[1] This is Windscheid's interpretation of Savigny's position. Savigny himself says (Besitz, p. 44) that "possession is at the same time a fact and a right," but qualifies this statement immediately by explaining that it is a fact in its essence, but resembles a right in its results.

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single will which aims to bring the thing under its control."[1] Similarly Bruns :

> Power without will is no more possession than will without power. . . . Will and power must cover each other; the will must go as far as the power, and *vice versa;* and since he alone really wills to control who wills this for himself, and not as mere representative of another, therefore he alone is possessor who wills to have the thing completely for himself. . . .
>
> If in the institutions of positive law we see the revelation (*Erscheinung*) of the universal idea of right, and if, accordingly, we seek for such a revelation in this matter of possession, we are instinctively led to the universal right of human personality and liberty, and thus to the principle that the personal will to control, which is realized in possession, needs, as such, to yield to no other will, but only to the law and the forms of law. . . . The basis of the protection of possession lies in the right of the personal possessory will *an sich*.[2]

In his *Basis of the Protection of Possession* Jhering puffed away with a breath these philosophic mists. Will, he declared, is undoubtedly the *vis agens* in the whole field of private law, but only in so far as it is exercised within legal limits. If the "realized will" is entitled to respect and protection, why does the law compel the person who has forcibly ejected a prior possessor to restore possession and pay damages? It is not true, in law, that one will is as good as another; in some cases the law recognizes and protects the "realized will," in other cases it discountenances and nullifies it. Why the law does this cannot be determined by invoking the right of the will *an sich*.[3]

After classifying the various theories, and subjecting them to a searching and in many cases destructive criticism, Jhering

[1] Windscheid, Pandekten, § 148. In justice to Windscheid it should be added that under this philosophical drapery stands the defensible legal idea that disturbance and invasion of possession are *torts*. This is also Savigny's theory. But Bruns expressly rejects it, falling back on philosophy pure and simple.

[2] Bruns, Das heutige römische Recht, in Holtzendorff, 3d ed., pp. 380, 381. In his Recht des Besitzes, § 58, Bruns declares that the will is in its nature free and every coercion of the will is a wrong.

[3] *Cf.* Stahl, Philosophie des Rechts, 5th ed. (1878), vol. ii, p. 304; and Dernburg, Pandekten (1888), § 170.

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advances his own explanation. Possession is protected for the sake and in the interest of property, of ownership. The owner is regularly possessor;[1] and whenever this is the case the maintenance of his position as possessor is a much simpler matter than the maintenance of his position as owner. As possessor he is spared the proof of his right; he is protected against encroachment, against every sort of disturbance and annoyance, upon his showing that he is in possession. If ejected, he is put back upon his showing that he was in possession and has been ousted without process of law. Possession is the strongest outwork of the fortress of ownership; and the protection of possession is a necessary complement to the protection of ownership. Of course the better protection thus accorded to owners enures to the advantage of non-owners in possession. That is the price which property has to pay for the advantages it secures in the protection of possession; but the advantages are cheap at the price.

The two chief points in Jhering's theory — facilitation of proof in possessory actions and probable ownership of the possessor — were too self-evident to be new. No practicing lawyer, of any time or race, could fail to appreciate the procedural advantage of resting on possession, and avoiding the *probatio diabolica* of title; from this point of view possession, as the English lawyers say, is "nine points of the law." The presumptive ownership of the possessor was suggested by Placentinus (of Bologna and Montpellier) in the twelfth century, and in the nineteenth Gans momentarily abandoned the contemplation of *Wille an sich* to point out that honest possession was at least incipient ownership, perfectible by prescription. The combination of these points of view, however, was original with Jhering, and the formation of the theory was all his own.

If Jhering had contented himself with presenting this view of possession as *an* explanation of the rules of Roman law, it is hard to see how anybody could have taken issue with him.

[1] Either because he holds the property himself, or because a tenant or bailee holds it for him.

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But, like all his countrymen of this century, he was looking for *the* explanation, the basis (*Grund*) of the Roman law of possession.[1] He had rejected other excellent theories, such as the repressal of self-help, the maintenance of public order, *etc.*, because they do not account for all the rules of the law. His opponents, therefore, hastened to point out that his theory does not explain why, in possessory proceedings, the defendant is not allowed to plead title. If the law of possession is based on the interest of the owner, it is quite logical, they declared, to spare him the proof of title when he appears as plaintiff, but quite illogical to deprive him of the opportunity of proving title when he appears as defendant. Jhering had anticipated this objection, and had tried to meet it in his book; but his explanation is far from satisfactory.

Twenty years later, in 1889, Jhering attacked the theory that the intention to maintain control against all the world, the will to hold like an owner (*animus domini*) is the characteristic element in "juristic" possession — the element which distinguishes such possession from the merely "natural" possession of the lessee or bailee. Against this theory, which he terms the "will theory," or "subjective theory," he set up and defended an "objective theory," which may be summarized as follows. The intention of possessing is of course essential to possession, but the intention of possessing for one's self is not essential.[2] The denial of the possessory remedies to lessees and bailees is an arbitrary rule, and its explanation is to be found in the economic and legal development of the Roman state.[3] The Roman tenant farmer (*colonus*) was far more dependent upon his landlord, far more completely under the

[1] Although he had previously recognized, in a general way, that it is sometimes impossible to find a single principle at the basis of a legal institution, and that a given institution may be "according to its primary plan absolutely dual." Geist des römischen Rechts, 3d ed., part ii, div. 1, p. 355.

[2] The Roman jurists spoke only of the *animus possidendi*, or *possidentis*. The phrases *animus domini*, *animus dominantis*, *animus rem sibi habendi*, are mediæval or modern. Only the second phrase, *animus dominantis*, has any basis in the ancient texts; it is a translation of the Byzantine ψυχὴ δεσπόζοντος, found in Theophilus's paraphrase of the Institutes, and in the Basilica.

[3] Besitzwille, ch. viii.

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landlord's surveillance and control, than the modern agricultural lessee. The Roman peasant-proprietor, in Republican times, leased but a part of his property, and landlord and tenant cultivated side by side. When land was given by large proprietors for really independent cultivation, it was given *precario*. Similar conditions prevailed in the earlier leases of dwellings: the tenant (*inquilinus*) took only a part of the house; the remainder was occupied by the landlord. It was natural, in both cases, that the landlord was regarded as the possessor, and that the tenant looked to him for protection against disturbance. This was but a slight extension of the authority of the head of the house, the *paterfamilias*. At first he possessed through the agency of his children and slaves; later he possessed through tenants. Children and slaves had only natural possession; tenants have the same. The extension of this rule to bailees seemed a logical necessity. It did little harm, because the protection of possession by the interdicts was much less important in the case of chattels than in the case of real property.[1] Paulus's assertion that lessees and bailees do not possess *ad interdicta* because they do not possess for themselves but for others, simply represents his effort to find a juristic explanation for the established rules of the law. As a piece of juristic construction it is far from admirable. It put a novel meaning into the familiar *animus possidentis;* and it failed to account for the well-established rules which gave the protection of the interdicts to the tenant-at-will, to the pledgee, and to the stakeholder. But in spite of its unsatisfactory character, this explanation of Paulus has been repeated ever since, and has become the basis of the modern theory of juristic possession.[2]

Jhering subjects the "will theory" and his own theory to a series of "tests" — historical, procedural, political and didactic. The most interesting of these (after the historical), and the one that throws most light upon the substantive law, is

[1] To sustain an action of theft, or an action for recovery *ex contractu* of things loaned by him, *etc.*, the bailee had need neither of title nor of "juristic" possession.

[2] Besitzwille, ch. xiii.

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the "procedural test."[1] The "will theory," which grants or denies the possessory remedies according to the *animus* of the possessor, logically requires that the plaintiff in a possessory suit should allege and prove his *animus dominantis*. But to hold a plaintiff to prove his state of mind is absurd. All that can be required is that he should produce *indicia* of his state of mind, *i.e.*, facts which lead to the presumption that he has been possessing for himself. The most important fact of this sort is the title under which he came into possession — his *causa possidendi*. Accordingly, many authorities have held that the plaintiff must at least show a *causa possidendi* which indicates an intention to hold for himself, *e.g.*, inheritance, devise, purchase or gift. But the ejector and the thief are entitled, by Roman law, to possessory actions. Was it required in Roman practice that such plaintiffs should allege and prove violent ejectment or theft? The Roman practice, Jhering maintains, like that which generally prevails in the modern world, required of the plaintiff no proof save of his corporeal possession.[2] If the plaintiff held by force or stealth, or permission from his adversary, it was incumbent on the adversary to allege and prove this. If he held by lease or bailment, it was probably incumbent upon the defendant to allege and prove this. Such at least is the rational mode of distributing the burden of proof.[3] In a rational system of pleading, therefore, *animus* plays no rôle whatever. It never appears.

[1] Besitzwille, ch. ix. It seems clear that it was the failure of the "subjective theory" to stand the test of procedure that first led Jhering to question its truth. In the fourth of his Confidential Letters, printed in 1863, he describes an imaginary suit for protection on the ground of possession which a young practitioner tries to carry through on the basis of Savigny's theory, with a result most disastrous to his client. Scherz und Ernst, pp. 63 *et seq.*

[2] For Roman practice there is no direct evidence; but the assertion of Paulus, Sententiae, 5, 11, § 2, that to prove *delivery* it is necessary only to prove corporeal possession, makes in favor of Jhering's contention. So, I think, does D. 5, 3, 11, § 1 *et seq.* cited above (p. 279).

[3] So in the French law. Code Civil, art. 2230: "On est toujours présumé posséder pour soi et à titre de propriétaire, s'il n'est prouvé qu'on a commencé à posséder pour un autre." "An article," Jhering characteristically remarks, "that in my eyes is of more importance for practical life than all that the literature of this whole century has produced regarding the distinction between possession and detention." Besitzwille, p. 168.

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If this is true, Jhering argues, is it not absurd to make will or intention the criterion of possession in our statement of substantive law? The true statement of the law is that natural possession as such is protected; that the corporeal possessor has not merely the right of self-defense, but the peculiar remedies given to the possessor. In two cases, however, the Roman law withdraws this protection; it refuses the possessory interdicts to lessees and bailees, not because they have the intention of holding for others, but because they are lessees or bailees. Their actual intention is of no consequence whatever; if they decide to hold for themselves, or for third parties, their change of mind has no effect upon their legal position, or upon that of the lessors or bailors for whom they originally agreed to hold. "No one," said the Roman jurists, "can change for himself his *causa possessionis*."[1]

Between the ruling "subjective theory" and his own "objective theory" there is, as Jhering recognizes, an intermediate opinion, which distinguishes juristic from natural possession by the *animus* or intention of the possessor, but which treats the actual will of the possessor as irrelevant. It attributes to him the "typical" will which a man in his position, with his *causa possessionis*, ought to have, and refuses to consider whether he has any other will. As Jhering points out, this theory really abandons will as the criterion of juristic possession, and substitutes positive legal rule. The typical will with which it operates is a mere legal fiction.[2]

To complete this sketch of Jhering's position on the legal topic which has most largely occupied the attention of German jurists in this century, it should be added that in opposition to

[1] Digest, 41, 2, 19, § 1.

[2] Besitzwille, pp. 15–20. Of all the representatives of the "causal theory," Dernburg, perhaps, comes nearest to Jhering's position. He writes in his Pandekten (2d ed., 1888), § 179: "The will to possess for one's self . . . is to be deduced from the situation (*Sachlage*). It results particularly from the ground — the *causa* — on which possession is taken. He who takes as owner or pledgee is juristic possessor; he who takes as lessee or agent is not juristic possessor." But farther back, in § 172: "Possessory relations constitute juristic possession only when the purpose of the possessor is to possess for himself, and when this purpose enjoys the recognition of the state."

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the Roman, as well as to the dominant modern view, he asserted that possession is not a mere fact, nor merely a "legal relation," but a right.[1] Possession is unquestionably an interest, and possession is undoubtedly protected; and having defined a right as "a legally protected interest," Jhering was logically constrained to admit possession to the category of rights. To most jurists this deductive test of his definition must seem a proof that the definition is at fault. A "right" that figures in legal procedure only so long as the question of right is not raised, is surely a right of a very singular sort. In his *Possessory Intention* Jhering adheres to his earlier statement as far as juristic possession is concerned, but abandons the ground in the case of natural possession, which he declares to be only a "legal relation."[2] But since he maintains that even the natural possessor enjoys some protection, and that natural possession and juristic possession differ solely in the degree of protection accorded by the law, we obtain, from his premises, this result: a right is an interest which enjoys *a certain degree* of legal protection. What degree is necessary is left to every one to settle for himself.[3]

The principal conclusions which Jhering reached in his *Possessory Intention* seem to me sound; but, for my present purpose, the proportion of truth in this book and in his *Protection of Possession* is of less interest than the point of view which his readers were compelled to take and the kind of considerations which were urged upon them. Before Jhering wrote, the discussion of the law of possession had been conducted in the most abstract fashion. Very little consideration had been given to the practical operation of the rules; and in the search for the principle beneath them, it had apparently not been recognized that the social effect of the rules might

[1] Geist des römischen Rechts, 3d ed., part iii, div. 1, pp. 351 *et seq.*; "Der Besitz," in Jhering's *Jahrbücher*, 1893, pp. 63 *et seq.*

[2] Besitzwille, pp. 50, 51.

[3] In Besitzwille, *loc. cit.*, there is also a curious reversion to the will theory, discarded twenty years before in his Besitzesschutz. While the protection of juristic possession is still based on the interests of owners, the protection of natural possession is based on regard for "the realized will." And yet the only difference between juristic and natural possession is the amount of protection!

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furnish a useful clue. In the first of these books he shifted the discussion from the plane of the abstract and ideal to that of the concrete and practical; and to one who had been ballooning through space in the company of the earlier writers — I speak from experience — the descent was jarringly sudden. To the mundane American mind the shock was slight, and its results exhilarating; but to Jhering's metaphysical countrymen it was obviously severe. With some of them, as with Keats's Endymion, the "first touch of the earth went nigh to kill."

For nine years after the appearance of his *Protection of Possession*, from 1868 to 1877, Jhering published but two small books — a collection of questions for discussion in moot-court,[1] and the famous *Struggle for Law*.[2] The cause of this relative reticence, on the part of a man whose mind was as active and whose temperament was as communicative as his, was his absorption in a task for which he felt and confessed himself inadequately prepared — the formulation of a philosophy of law. He was preparing the first volume of his *Zweck im Recht* — a title which I cannot translate literally, because the English language has no precise equivalent for *Zweck*. *Teleology of Law* may serve as a paraphrase. The *Struggle for Law* was primarily a large chip thrown out from his workshop — a special theme encountered, examined and dismissed into print — while he was elaborating his general doctrine.[3]

At an early stage of his campaign against what seemed to him the aberrations of German legal science, Jhering had become convinced that the cause of these aberrations was the general acceptance of a false philosophy. In dealing with the question of rights, in the last installment of his *Spirit of Roman Law*, he had discovered, as he believed, the basis of a true legal philosophy. Private rights exist primarily for the protection of private interests; but these private interests are themselves protected because they are at the same time public

[1] Jurisprudenz des täglichen Lebens (1870).
[2] Kampf ums Recht (1872).
[3] As the author points out in Zweck im Recht, 2d ed., vol. i, p. 75.

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interests. All law exists for the furtherance of social ends, and "the end [*Zweck*] is the creator of the entire law." This, however, is true not only of law, but of morality, of social custom or usage, of etiquette, and even of fashion. The whole social life is governed by rules which are intended to subserve social ends; and these rules, worked out in social life and enforced by social pressure, constitute the system of social order. That which distinguishes social rules from mere social practice or habit [*Gewohnheit*] is their imperative character, the fact that society insists upon their observance, and inflicts upon those who disregard them pains and penalties. That which distinguishes the legal rule from the rule of morals or fashion is the nature of the sanction. The legal rule is enforced by "mechanical" or "external" coercion; behind it stands, in the last instance, the physical force of the community, and this force is directly exercised, in case of necessity, upon the person or the property of the individual. In early society this physical coercion is "unorganized": it appears as lynch-law, clan feud, self-help of the wronged party. In international law, at the present day, the physical coercion is applied in an analogous manner; but early law and modern international law are rightly designated as law, because, in last instance, the mechanical sanction comes into play. Within the modern state, of course, the application of physical coercion is reserved to the state and its governmental organs, and national law has thus become the command of the state. Rules of morals, of social usage, of fashion, *etc.*, are enforced by purely "psychological" or "internal" coercion. The sanctions are those of public opinion — disapproval, ridicule, contempt, ostracism. The field of manners and morals and of the "psychological" sanction is of course much wider than that of law; it includes nearly all the field of law, and a vast outlying territory. Of the way in which the legal and the purely social sanctions supplement each other, he writes:

The advantage of mechanical coercion by the state lies in the certainty of its operation: where it is applicable, it attains what it is meant to attain. But it is not applicable everywhere, and therein

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lies its incompleteness. It is too unwieldy, too clumsy, to give effect to all the norms which society recognizes as necessary. . . . The advantage of psychological coercion by society lies in the fact that there is no relation of social life from which its influence is excluded. It forces its way in everywhere, like the air — into the inner chambers of the house and up to the steps of the throne, into regions where the mechanical sanction fails of all effect. Its weakness lies in the uncertainty of its operation: the moral judgment of society, of public opinion can be defied, but not the arm of the state.[1]

It will be seen that Jhering's conception of law is analogous to that of the English positivists; but it is by no means identical with theirs. Rules of modern national law, he declares, are *ordinarily* established by the state;[2] they are commands (*Imperative*) of the state; but it is not their enunciation by state authority, but their enforcement by state power that makes them legal rules. "The circumstance," he says, "that the state authority declares a rule does not give it the character of a legal rule, but only the circumstance that the state binds its organs to execute the rule by external coercion."[3] In his definition of law from the teleological point of view, the declaration of legal rules by state authority is not included. "Law is the totality of the conditions of existence of society that are assured by means of external coercion through the power of the state."[4] With the rejection, as a criterion of law, of the formulation of its rules by the state, disappears of course the difficulty which the English positivists encounter in

[1] Zweck im Recht, 2d ed., vol. ii, pp. 182, 183.

[2] *Ibid.*, vol. i, p. 331.

[3] *Ibid.*, vol. i, p. 337. "Rules that cannot be enforced by him who sets them up are not rules of law." *Ibid.*, vol. i, p. 318. Puchta (Pandekten, § 11, note g) had declared that where the legislator has abolished popular custom as a source of law, the result is only to deprive it of its operation upon the judge. It continues to exist as law, only the judge does not apply it. To this Jhering responds: "We might as well say that when fire is put out with water, it is still fire, only it doesn't burn." He shrewdly adds that what led Puchta astray, was the possibility of voluntary obedience to certain rules within a certain circle. "If this is enough to give the rules the character of legal rules, then the rules of a prohibited association must be regarded as legal rules." *Ibid.*, vol. i, p. 322.

[4] "Recht ist der Inbegriff der mittelst äusseren Zwanges durch die Staatsgewalt gesicherten Lebensbedingungen der Gesellschaft." *Ibid.*, vol. i, p. 511.

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bringing customary law under their definition.[1] And with the assertion that execution of law by the state is not essential to the conception of law in the widest sense, provided its rules are actually enforced by mechanical or external coercion, disappears also, as we have noted, the difficulty of including primitive national law and modern international law in the category of law.

It was not against the English positivists, however, that Jhering was defining his position, but against the German idealists. To these law is simply the expression of will — of God or of society or of the state; and the rights accorded to individuals are recognitions of the liberty of the individual will, which is "in itself" free. Primarily — and this is what gave the book its name — Jhering insisted on going behind the will and considering the motive. This, he declares, is always something to be attained, an end (*Zweck*). Law is a means to the ends of society; rights are means to individual ends: neither law nor rights are intelligible unless we consider, in the case of every rule of law, the social end, and in the case of every right, the personal end. But from the social point of view the individual end is simply a means to securing social ends; and neither personal rights nor their limitations can be fully comprehended from any other than the social point of view. Private rights exist only because there is a large domain of social life in which egoism, in pursuing its own ends, realizes the ends of society. It is only in this domain, where the individual interest harmonizes with the social interest, that private rights exist; and they are exposed to limitation at the point where egoism menaces or even thwarts a social interest. Jhering illustrates this point by examining the social function of contract and that of private property, and by indicating the limitations which the law imposes upon freedom of contract and upon the employment and disposition of private property.[2]

[1] It is precisely because customary law still exists that Jhering qualifies with an "ordinarily" his statement that the rules of law are established by the state. See *loc. cit.* (vol. i, p. 331), note 2.

[2] Zweck im Recht, vol. i, pp. 264–291, 516, 518–534.

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The *Teleology*, however, is more than a system of legal philosophy; it is a system of sociology.[1] It deals not only with law, but with economics, politics and ethics. Ethics, as Jhering insists, is neither a part of psychology and the twin sister of logic, nor a part of theology and the twin sister of dogmatics. It is a part of social science, and the twin sister of jurisprudence, of economics and of politics.[2] All morality — the recognition of what is moral, and the will to do it — is an historical product, the outcome of the life of man in society. The rules of ethics are no more absolute and eternal than those of law: moral rules, like legal rules, subserve the interests of society, and these interests vary according to the character of the social organization and its stage of development. The theory, of course, is not new. It seemed new to Jhering, when he was working it out in his own mind, because he was imperfectly acquainted with the literature of ethics. He had found nothing akin to his view except in the writings of the English utilitarians — some of which, notably those of Bentham, of Mill and of Spencer, had been translated into German and were thus accessible to him; and he differed from the English utilitarians in that he could not accept the happiness or welfare of the individual as the basis of morals.[3] To Jhering the social interest is the sole basis; and society, he declares repeatedly, cannot be constructed from the point of view of the individual.[4] When, however, after the appearance of the first edition of his second volume, a Roman Catholic ecclesiastic showed that Thomas Aquinas had clearly set forth both the social utility theory and the relativity of "practical" truth,[5]

[1] "In its present form," Jhering wrote later, "the work ought really to be entitled: *The Teleological System of the Moral Order of the World.*" Besitzwille, preface, p. x.

[2] Zweck im Recht, vol. ii, p. 125.

[3] Spencer's Data of Ethics was not, I think, accessible to Jhering when he wrote the second volume of Zweck im Recht. Jhering had before him such earlier writings of Spencer's as Social Statics. In the Data of Ethics more stress is laid upon social utility, but even in this work ethical rules seem to be the result of a compromise between social and egoistic interests.

[4] Zweck im Recht, vol. i, p. 537; vol. ii, pp. 170 *et seq.*

[5] Jhering quotes: "Firmiter nihil constat per rationem practicam, nisi per ordinationem ad ultimum finem, qui est bonum commune. . . . In speculativis est

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Jhering was visibly taken aback. In his second edition he admitted, with admirable frankness, not only the prior enunciation of his theories by "that great intellect," but also the inexcusable character of his own ignorance. He adds, however, that the modern philosophers and the Protestant theologians are more to blame than he, a jurist.

> I ask myself, with astonishment, how was it possible that such truths, once uttered, should have been so completely forgotten in our Protestant science? From what aberrations it might have saved itself, had it taken these utterances to heart! I, for my part, would perhaps have left this whole book unwritten, if I had known of them.[1]

This apologetic outburst should be taken with more than a grain of allowance. These ideas seemed to Jhering of fundamental importance; had he known them to be Thomasian, it would probably have seemed to him his duty, so long as they had lost their influence on modern German thought, to reannounce them. Jhering had a just pride in his originality; but the desire of personal recognition was not the only motive that led him to write.

A more serious defect in his sociology, it seems to me, is that, in spite of his constant condemnation of the individualistic point of view, he has by no means wholly emancipated himself from it. He not only starts with the purely egoistic individual and works towards the socially minded man, — which is perhaps legitimate as a matter of pure dialectics, — but he constantly assumes that individual egoism is historically antecedent to all social evolution. That absolutely unhistorical being, "the natural man," who lived outside of all social bonds, recognized no social imperatives, sought only the attainment of his immediate selfish ends, is constantly assumed to be the real primitive man. Society apparently starts as a mere aggrega-

eadem veritas apud omnes, in operativis autem non est eadem veritas vel rectitudo practica apud omnes. . . . Humanae rationi naturale esse videtur, ut gradatim ab imperfecto ad perfectum veniat. . . . Ratio humana mutabilis est et imperfecta, et ideo eius lex mutabilis est. . . . Finis humanae legis est utilitas hominum." Zweck im Recht, 2d ed., vol. ii, p. 161, note 2.

[1] *Ibid.*, p. 161.

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tion of such egoists, who coax and club each other into the pursuit of social ends.[1]

It is a result of this initial error that he obviously believes[2] that the pressure of society upon the individual has been increasing through the course of human history, and is likely to increase. On this point the studies of the modern sociologists and the researches of the younger school of legal historians[3] are pointing to a directly contrary conclusion. Man appears in history as a mere constituent particle in a horde: it is the horde that feels and wills and acts, carrying the individual with it like a drop of water in a wave. As society develops higher and more complex forms of organization, the demands of society upon the individual increase, indeed, in number and variety, — and it is this fact probably that has led Jhering and many others astray, — but at the same time the

[1] In his third volume, which was never written, Jhering intended to discuss the topics "sense of duty," "love," and "ethical self-assertion"; and he indicated the position which he proposed to take by saying: "I, too, come finally to the result that the individual is to carry morality within himself as the law of himself, and that in acting morally he only asserts himself: but I come to that point, I do not start from it." *Ibid.*, vol. ii, p. 102.

[2] But indicates his reluctance to believe, in a way that shows his instinctive good sense. *Ibid.*, vol. i, pp. 513 *et seq.*

[3] It has long been a commonplace of the writers upon Greek and Roman history that the absorption or "merger," to use a legal phrase, of the individual in the *civitas* was something so different from our modern conceptions as to be difficult to realize; but we have cherished the idea that a much higher degree of personal independence existed among our Teutonic ancestors. On this point the leading German legal historian of our day expresses a directly contrary opinion. "A prominent characteristic of early Teutonic law is the inflexible strictness with which it subjects the single person to the dominant social relations, and the single legal issue to the views of the whole social body. The individualistic character that is not uncommonly attributed to our earliest law, is wholly lacking. More than in later times is the individual fettered to the will and the usages of the various associations in which he moves. . . . The visionary ideal of Teutonic liberty in the primeval forest applied in fact only to the outlawed and outlandish men who were excluded from the circle of tribal companionship. . . . It is not the liberty of the individual, but the equality of all free partakers of the law that is peculiar to the earliest Teutonic system. This equality, however, could be maintained only by the high degree of coercion exercised upon the individual — a coercion, to be sure, which, if consciously felt at all, was scarcely felt as hardship or constraint, because the individual, as an integral part of the community, was dominated by its manner of regarding things." Brunner, Deutsche Rechtsgeschichte (1887), vol. i, pp. 111, 112.

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intensity of the social pressure as a whole is progressively diminished.[1] Personal freedom increases, and with it the sense of individuality. In last analysis, individualism itself, as we understand it to-day, is the product of social evolution, and the freedom of the individual is not the starting-point, but the goal of human development. In this phase the Hegelian statement that the development of law is "the development of the idea of freedom," however it has been misconceived and misapplied, has in it a profound truth.

The contrary theory — that social evolution must have started with the purely egoistic "natural man" — nevertheless so dominated Jhering's thought that it determined the structure of his whole book. The question that he sets himself is: How is the individual brought into the service of society and induced to minister to its ends? His answer, so far as it is developed in the two volumes of which the work consists, is: Reward and coercion. Reward plays its chief rôle in economic life, and the long chapter[2] which deals with this subject is mainly devoted to economics. He apparently assumes that the development of commerce precedes the development of law and the state, and that the state is preceded by voluntary association for common ends. Coercion is then taken up, and first the "mechanical" coercion which is exercised by law. In the second volume he goes over into morals, developing his "historical-social" theory, and dealing *in extenso* with social usages which we are not accustomed to regard as either moral or immoral, but to which society constrains obedience by "psychological" coercion. The latter half of the volume is devoted wholly to manners — the last third (two hundred and forty pages) to courtesy (*Höflichkeit*). The motive that led Jhering

[1] To appreciate the truth of this paradox — that increasing variety of social demands is perfectly compatible with an increase of personal freedom — we need not go so far afield as do the historical sociologists. We see the same thing when we compare life in a small modern village with life in a great city. In the village the demands of the social life are fewer, and yet the social pressure, the restraining and coercive power of local sentiment, is greater than in the city. City life makes more demands upon the individual, and yet it leaves him really and consciously freer.

[2] Vol. i, ch. vii, pp. 93–233.

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into this apparently remote field was the desire to demonstrate that all "social imperatives"— fashion, manners, morals and law — are adapted to social ends and subserve the "conditions of existence of society." To prove this for law alone seemed to him an imperfect solution of the problem. In spite of much serious thought, much keen analysis and many amusing divagations, this portion of the book is hard to read ; and the foreigner is impressed, as his countrymen have been, with the feeling that the devotion of several of Jhering's best years to the study of social manners was a regrettable waste of energy. Whether Jhering himself felt this, or recognized only the fact that for the first time he had not "scored" either with his colleagues or with the public, the result was the same. He wisely abandoned the attempt to complete his "teleological system of the moral order of the world" — if carried out on the scale set in his second volume, its completion would have necessitated not merely a third but probably a tenth volume — and returned to legal investigations. One separate book was thrown off in connection with his labors on the second volume of the *Teleology of Law*, as the *Struggle for Law* had been thrown off while he was writing the first volume. This dealt with "fees" — not lawyers' fees, however, or even professional fees in general, but *Trinkgelder*.[1] It attained the moderate success (for Jhering) of a third edition, as did ultimately the *Teleology* ; but it met with even greater professional disapprobation than the second volume of the larger work.

Reading the *Teleology* again, as I have done for the purposes of this article, I am struck with the fact that the digressions are the most readable parts of the book. So long as Jhering clings to the main thread of his argument, he is almost tedious — a proof, if one were needed, how far he had strayed from his proper field. In his excursions, however, he is invariably interesting. So, for example, in his eloquent protest against *laisser-faire* in the law of contracts ;[2] so in his discussion of the difference between wages and governmental

[1] Das Trinkgeld, 1882 ; 3d ed., 1889.
[2] Zweck im Recht, vol. i, pp. 132–140.

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salaries, where, after pointing out that salaries are not based, like wages, on the value of the service, since the state pays only partly in cash and the rest in honor, he adds that the correction is found in "the rich wife," who represents the partial conversion of the honor into cash ;[1] so in his denunciation of joint-stock companies, or rather of the absence of control over these companies which marked their first appearance in Germany, and led to the same abuses there as in other countries ;[2] so in his vehement attack upon the jury as an institution that formerly subserved important ends, but has outlived its usefulness ;[3] so in his demonstration of the advantages of a strict criminal code to the criminals themselves, since popular justice is far more cruel than the most Draconian system administered by government — an admirable text for a sermon on the significance of lynch-justice in our own country ;[4] so in his analysis of the principle that underlies the prevention of cruelty to animals, where he shows that the purpose of such laws is purely social, that they are made for the sake of man, and that to explain them by attributing rights to animals would logically constrain us all to become not only anti-vivisectionists, but vegetarians.[5] Quite in his best vein is the exhortation addressed, in the second volume, to students of ethics, not merely to investigate their problem historically, but to start with comparative philology and mythology, since these are "the oldest and most trustworthy witnesses as to primitive popular views of morality."

The two together may be described as the palæontology of ethics. In the deeds of the gods, in all that they permitted themselves and were able to permit themselves without forfeiting in the eyes of the people their claim to veneration, there is preserved for us the most ancient judgment of humanity as to what is morally permissible. . . . The gods are the petrified types of the prehistoric moral man.[6]

[1] Zweck im Recht, vol. i, pp. 200, 201.

[2] *Ibid.*, vol. i, pp. 220–225.

[3] *Ibid.*, vol. i, pp. 408–420.

[4] *Ibid.*, vol. i, p. 461.

[5] *Ibid.*, vol. ii, pp. 141–144. Incidentally this argument shows how shallow is Macaulay's famous fling at the motive which actuated the Puritans in suppressing bear-baiting. The Puritans were quite right.

[6] *Ibid.*, vol. ii, p. 126.

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Not, perhaps, the most valuable, but certainly the most amusing pages in this volume are devoted to the teleology of fashion (*die Mode*). Fashion expresses, to him, the supposed interest of a social class — the class which commonly calls itself "society." It represents the constant effort of this class to distinguish itself externally from the common herd.[1] In these days of democratic equality, of improved manufacturing processes and of facile and rapid production, the imitative herd presses so closely upon its betters that these are unable to maintain any semblance of differentiation otherwise than by constant change. All that they can do is to keep a little ahead of their pursuers. Hence, the rapid changes of modern fashion.

But to revert to more serious matters. It is refreshing, in these over-sentimental days, to see the social value of force so fully recognized and so courageously proclaimed as we find it in this work. All law, all right, Jhering maintains, are based historically upon triumphant force: they are "the policy of force." Law is thus at first the mere servant of power. But "at the moment that power calls in law to announce its commands, it opens its house to justice, and the reaction of law upon power begins. For law brings with it as inseparable comrades, order and equality."[2] But not even in the highest civilization does law become lord of power. "Power, if need be, can exist without law: it has proved that it can. But law without power is an empty name."[3] To-day, when we speak of the reign of law, we think of power as merely the servant of law; "but at times the relation is reversed; power casts off its obedience to law and itself sets up a new law." Organized power revolts against law in the *coup d'état;* unorganized power, in the revolution.

It is easy for legal theory to condemn these acts; but these disturbances ought to lead our theorists to take a different view of the

[1] Zweck im Recht, vol. ii, pp. 230–241. Substantially the same theory was set forth a number of years ago in an editorial in the New York *Evening Post* on the question "Should a Dude wear White Gaiters?" The identity of the theory will scarcely justify a suspicion of plagiarism: it was undoubtedly a case of the attainment of the same truth by independent thinkers.

[2] *Ibid.*, vol. i, p. 353.

[3] *Ibid.*, vol. i, p. 253.

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normal state of things. Law is not the supreme good: it is not itself an end, but merely means to an end: the end is the existence of society. If society cannot exist under the established legal order, and if the law itself is unable to find a remedy, power intervenes and does what is demanded.[1]

In case of necessity the law itself permits the individual to do with impunity what under other circumstances would be criminal. To meet exceptional emergencies, exceptional powers are constitutionally accorded to most governments: the proclamation of a dictatorship or of martial law, the suspension of existing law, the establishment of provisional law by executive ordinance, *etc.* These are "safety-valves which permit the power of the state to deal with crises legally."

But the *coup d'état* and the revolution are no longer on legal ground: the law cannot license them without stultifying itself; from the legal point of view they are simply to be condemned. . . . But higher than law stands life; and if in fact the situation is such as is here presupposed, if there is a case of necessity that narrows the issue to law or life, there can be no doubt as to the decision — power sacrifices law and preserves life. . . . Our judgment concerning such acts is determined by their success. Appeal is taken from the legal forum which condemns them to the tribunal of history. This has always been deemed by all people the higher, the supreme instance, and the judgment that is here rendered is final and decisive.[2]

That private rights have their historic basis in successful force, Jhering had asserted five years before (1872) in his *Struggle for Law*. He had also shown that the value attached by society to a legal rule, or by the individual to a legal right, is exactly proportionate to the importance of the social or individual interest which the law secures. But the central thought in the *Struggle for Law* is the duty of the individual to assert and enforce his rights, not only for the sake of his own manhood, but for the sake of society. It is a lay sermon addressed to the conscience of his readers. Like most books that make an impression, the *Struggle for Law* is one-sided. In spite of the care with which Jhering confines his argument to cases where

[1] Zweck im Recht, vol. i, p. 250. [2] *Ibid.*, vol. i, pp. 251, 252.

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something more than money is at stake, — to cases where submission to wrong is sacrifice of personal dignity and of social interests, — the book impresses the reader as a *laus litium*, a panegyric upon quarrelsomeness. But, however one-sided, the book is substantially true ; and the side of truth which is here turned to the reader is one that the modern man needs to have shown him. To this fact and to the warmth and eloquence with which the duty of resentment and litigation is presented the *Struggle for Law* owes its phenomenal success. In 1880 it had been translated into fourteen other languages,[1] and in 1891 it reached its tenth German edition.

The *Struggle for Law*, if widely read, was also widely criticised ; nor did Jhering's critics confine themselves to his main theme. The position taken by him on minor points invited and aroused controversy. No part of the book attracted more attention, nor did any arouse more dissent, than his discussion of the case of Shylock *vs.* Antonio in *The Merchant of Venice*. Jhering asserted that the decision of Bellario-Portia was unjust. The plaintiff should have been thrown out of court because his contract for a pound of Venetian flesh was immoral. But if this was not possible at Venetian law, — and of course the poet was free to make the law of Venice such as suited his dramatic purpose, — Shylock should have had his pound of flesh. He should have been allowed to take a trifle more, if the excess was due to a pardonable error of judgment ; he could certainly take as much less as he chose ; and he was entitled to as much blood as would naturally flow in the course of the operation. It was grossly unjust first to recognize the validity of his contract and the lawfulness of his claim, and then to avoid the contract and defeat the claim by such wretched, pettifogging technicalities as those to which the court resorted — technicalities which the crude and formalistic code of the XII Tables, in providing for the distribution (*in partes secare*) of the body of the delinquent debtor among his creditors, seems to have intended to bar by the clause : "*Si plus minusve secuerint, sine fraude esto.*"[2]

[1] Kampf ums Recht, preface to sixth edition.

[2] *Ibid.*, 6th ed., pp. 58, 59.

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It is not difficult to see how Jhering was led to take this position. He was insisting upon the solidarity of law and rights — upon the necessity, for the maintenance of law, of the enforcement of private rights ; and nowhere in literature was a more energetic expression of this idea to be found than that which Shakspere put into the mouth of Shylock :

> This pound of flesh, which I demand of him,
> Is dearly bought, is mine, and I will have it.
> If you deny me, fie upon your law !
> There is no force in the decrees of Venice.

Jhering was also exalting the duty of the individual to assert his rights ; and nowhere in history or fiction could he find a person more bent upon this course than Shylock. But in order to make of Shylock a proper champion, it was absolutely necessary to insist that he was in the right. In order to make of him a sympathetic figure, Jhering has to go further, and to import into Shakspere's comedy the essentially modern view that Shylock is the type of his wronged and flouted race, "of the mediæval Jew, that social pariah, who cried in vain for law."

> The tremendous tragedy of his fate does not lie in the fact that law is denied him, but in the fact that he, a Jew of the middle ages, has faith in the law — one may say, just as if he were a Christian — a faith in the law that is firm as a rock, that nothing can cause to waver, and that the judge himself strengthens; until the catastrophe breaks upon him like a thunderbolt, shaking him out of his dream and teaching him that he is nothing but the outlawed Jew of the middle ages, who gets his right in being swindled out of it.[1]

Jhering's view of this case has met with little sympathy. It has been criticised both from the literary and the legal point of view. Of the many answers that have been made by lawyers, I single out for mention that of Kohler.[2] He agrees with Jhering

[1] Kampf ums Recht, 6th ed., p. 59.

[2] Kohler, Shakespeare vor dem Forum der Jurisprudenz (1883), pp. 3 *et seq.*, 71 *et seq.* This is a curious book, too little known to English readers. The author has gained the conviction by "prolonged juristic and æsthetic studies" that the English poet possessed "an almost superhuman power of intuition," by virtue of which

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that the decision is technically indefensible, but maintains that it is nevertheless just. It is simply a case of a correct decision on wrong grounds. Such decisions, he urges, are especially common where the development of the law has been outstripped by the development of ethics. That was the case, clearly, in the Venice of Shakspere's imagination. The harsh law of debt, which subjected the delinquent debtor completely to the power of his creditor, was still law, but it no longer corresponded to the contemporary sense of right. Shylock, in attempting to utilize the law for purposes of vengeance, brought the antithesis between the law and the moral sense of the community to distinct consciousness, and placed upon the old rules a strain that they could no longer bear. They give way, and a new and milder law appears — not yet clearly formulated; attained, indeed, by false reasoning and untenable distinction; but capable of logical formulation in the further process of judicial interpretation.

To an outsider, this explanation of Kohler's seems so thoroughly in the line of Jhering's own thought as revealed in many passages of his legal-historical writings, that one is tempted to wonder whether Jhering would not have accepted it if the *Struggle for Law* had been written by a third person. Since, however, the position assailed by Kohler was his own and not another's, he came to its defense in a note appended to his seventh edition, in which he carried the war into the enemy's country, and made merry with Kohler and his methods of studying legal history. To this counter-attack, Kohler responded, with a *Nachwort* which, I believe, was the last word in this controversy. In this characteristically academic interchange of incivilities, the only fresh point brought out was Jhering's insistence that a definite and complete judgment had been rendered

he was able to penetrate "the most secret recesses of legal history, as of history in general." He discusses The Merchant of Venice from the point of view of the law of debt, Measure for Measure from that of *desuetudo* and pardon. Hamlet depicts the conflict between the custom of blood revenge and the more advanced morality which leaves vengeance to God and penalty to the state. A closing section is devoted to the legal material in the other plays. In the book as a whole there is a great deal more law than Shakspere, and a vast if somewhat heterogeneous collection of information about early law in general.

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in Shylock's favor before any information was given him touching the consequences of a miscalculation in weight or of incidental blood-letting, — that his right was not denied in the judgment, but frustrated when it came to the execution of judgment, — while Kohler insisted that the utterances of Portia, from "A pound of that same merchant's flesh is thine" to "Thou diest, and all thy goods are confiscate," constitute a single original and integral judgment. One cannot help wondering what the poet would have made of this entire controversy: whether he would have been more surprised at learning that *The Merchant of Venice* was a tragedy, as Jhering asserts, or at being informed by Kohler that he had divined all the subtle modes in which progressive views of ethics obtain recognition in the application of law.

It was Jhering's original plan to conclude his *Teleology* (after he should have worked through the fields of manners and morals) with a detailed demonstration of the value of his point of view for the comprehension of law, both as regards its general principles and its more important institutions. His *Possessory Intention*, as he explains in the preface,[1] represents a partial realization of this broader plan: it is an expanded section of the projected final chapter of the *Teleology*. That is the significance of its sub-title: *Also a Criticism of the Dominant Juristic Method.*

For twenty years (1868–1888) Jhering had devoted his best energies to the task of elaborating and illustrating his philosophy of law. The work in which he undertook to develop his system was indeed left unfinished, but the system itself was clearly set forth. Against the will as the source of law and of rights he had set the goal of the will, the end to be attained. Against the individual interest he had set, as the creator of the whole social order, the social interest. Against the theory of the historical school, which treated all legal development as a process not merely organic but largely unconscious, he had insisted on the reflective and conscious character of legal progress, even in its early stages. He had not, however, fallen

[1] Besitzwille, pp. x, xi.

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into the error of asserting that all law is consciously created to attain ends distinctly discerned: the ends which society strives to realize are not all "subjective," *i.e.*, consciously formulated; "objective" ends play a great part.

It is not easy for men of English blood and traditions to realize the necessity of the task which Jhering had undertaken. The point of view which we naturally take was expressed, a year or so after the appearance of the first volume of the *Teleology of Law*, by an American fellow-student in Göttingen. "Is it not odd," he said to me, "that Jhering should be writing a big book to prove what no English or American lawyer would dispute?" A few months earlier, however, I had received striking evidence that what is self-evident to an Anglo-Saxon is not necessarily self-evident to a German. I had had a conversation at Berlin with an elderly German friend — a judge, for many years, of the highest Prussian appellate court. This gentleman had shown a kindly interest in my studies and plans, and to him I spoke of my intention to spend the following semester at Göttingen, for the sake of hearing Jhering. "For heaven's sake," said the judge, "don't do it. Jhering will mix you all up. His *Geist* was a clever book, but his *Zweck* is all nonsense [*dummes Zeug*]."

During the years devoted to his *Teleology* and to the books that branched out from that main stem, Jhering did not devote all his leisure to fighting philosophy with philosophy. He recurred more than once to his earlier and more congenial mode of attack — *ridendo dicere verum*. The authorship of the *Confidential Letters* had ceased to be a secret, and a second series had been solicited and promised as early as 1872. In 1880 Jhering redeemed his pledge in a series of "feuilleton" articles, as he himself described them, which were published at Vienna in the *Juristische Blätter* under the running title: *Chats of a Romanist.*[1] These essays dealt entirely with questions of Roman legal history; and while the practical point of view, the consideration of the "end" subserved, is constantly utilized for

[1] Plaudereien eines Romanisten. Reprinted in Scherz und Ernst (1885), pp. 121–243.

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the better understanding of the rules discussed, the *Chats* are more akin to Jhering's *Spirit of the Roman Law* than to his *Teleology;* they rather form a part of his constructive work in legal history than of his polemic against abstract jurisprudence. But when, after the appearance of the second volume of the *Teleology*, he was urged to republish both the *Letters* and the *Chats*, he rounded them into a book — *Jest and Earnest* — by adding new matter,[1] in which he returned to the theme of the *Letters*. Employing the time-honored machinery of the dream, Jhering depicts himself as a newly disembodied spirit, transported by the double title of Romanist and theorist to "the juristic heaven of concepts." This lies far beyond the solar system, in outer darkness. "The sun," his guide informs him, "is the source of all life, but concepts cannot accommodate themselves to life: they need a world of their own in which they may exist for themselves solely, remote from all contact with life." The obscurity of this heaven is no disadvantage to the theorist: "even on earth his eyes have been trained to see in the dark." Candidates for admission must first pass through quarantine for the removal of any trace of earthly air, and they receive, if necessary, a draught from a spring whose waters efface all earthly points of view, — but Jhering is assured that "very few who apply for admission here find it necessary to make use of it." The applicants come chiefly from Germany, and thence only of late years: Puchta was the first. They are for the most part Romanists, but Germanists and criminalists are also received, "provided they share with the Romanists their faith in the sovereignty of concepts." Professors preponderate, but there are also "members of your Imperial Diet and your Houses of Deputies, whose belief that the world is ruled by abstract principles has remained, thank God, unshaken by your Bismarck." An examination is required for admission: it is indispensable that the candidate show "capacity to construct a legal institution purely from the texts or from the abstract concept, without any consideration of its real practical signifi-

[1] Im juristischen Begriffshimmel, ein Phantasiebild; Wieder auf Erden, — wie soll es besser werden? Scherz und Ernst, pp. 247–383.

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cance." Savigny very nearly failed: he was admitted, however, on the strength of his essay on possession, and because, by opposing codification, he had aided in maintaining Roman law in Germany. Arndts and Wächter were both rejected: Wächter's mind "moved always in the lower region of the practical"; and although Arndts had based his *Pandects* on Puchta, "he had made too many concessions to the needs of practical life at the cost of pure theory."

Before attempting the examination, Jhering finds that it is admissible to inspect the abode of the theorists, and of this opportunity he gladly avails himself. He examines the palæstra, or field for gymnastic exercises in construing, interpreting, *etc.*; the legal-historical academy, where defective inscriptions and corrupt texts are "restored"; the museum of pure concepts (which has no doors, and to enter which it is necessary *mit dem Kopf gegen die Wand zu rennen*); and the pathological cabinet, which displays these same concepts as they have been defaced and distorted on earth from the days of the Roman jurists down, through considerations of expediency. In the examination of these and other objects of interest, and in conversation with his guide and other blessed spirits, Jhering finds full opportunity to satirize his abstract contemporaries and their theories. Convincing himself, before long, that he does not belong in this heaven, Jhering finds that two other localities are open to him — the heaven of the legal philosophers, where reason takes the place of abstract ideas, and the heaven of the practitioners. The former is the abode of the advocates of natural-law doctrines; and the information which Jhering receives concerning the examination held there and the confession of faith exacted of all applicants shows him that he cannot hope for admission to that paradise. He decides, accordingly, upon the heaven of the practitioners, and is conducted thither. As he knocks at the gate, he awakes.

In a closing section, from which I have already made citations,[1] Jhering discusses seriously the evil results of an over-abstract jurisprudence, its causes and its remedies. The chief cause he

[1] POLITICAL SCIENCE QUARTERLY, X, pp. 687 (December, 1895), *et seq.*

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finds in an undue separation of theory and practice. His remedies are: that the university teachers of law be required first to pass a number of years in the practical work of the courts, as assessors; that the case system of instruction be more largely employed in the universities, and that participation in the *Practica* be required of the students; that in the state examinations less stress be laid upon written themes and more upon the oral examination, and that in the latter more weight be attached to the solution of concrete cases. He is speaking, of course, of the state examinations for admission to the judicial service and to the bar, not of the academic examination for the doctorate. Two changes suggested by others he emphatically disapproves. The law professors are not to combine practice with instruction, nor is the three-year course of academic study to be lengthened. Three years, he thinks, are enough if properly employed.

Of the justification of Jhering's crusade against abstract jurisprudence — of the necessity of such a reaction in Germany as he strove to produce — I have already spoken. The tendency to undue abstraction was of course at no time universal: there were contemporaries of Jhering as practical as he himself could desire, and among them were professors (like Eck) who strove always to impress their students with the importance of the practical point of view. But the tendency which Jhering combated was certainly dominant, and Jhering made himself the most prominent champion of the opposite movement.

Of the effect of his opposition it is hard to form a definite judgment. That German legal science is to-day more practical than it was thirty years ago, no one who has followed its development ever so cursorily can for a moment question. But how far this change is due to Jhering's efforts, and how far it is due to the pressure of practical legislative problems in the new German Empire, is a question on which it would be rash to express an opinion.

MUNROE SMITH.

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SEEBOHM'S TRIBAL SYSTEM IN WALES.[1]

THAT the appearance in 1883 of Mr. Frederic Seebohm's *English Village Community* opened a new period in the study of mediæval social and economic history, no longer needs saying. That book did two things: it gave us a knowledge, such as we had not possessed before, of the daily life of the mass of the English people; and it created a presumption that the explanation then currently accepted of the genesis of those conditions was altogether inadequate. But it has to be confessed that it did not quite succeed in making clear to its readers the directions in which its author himself looked for a solution of the problem. It was understood that Mr. Seebohm abandoned the theory which traced back the manor to a free village community; it was frequently supposed that he substituted a purely "Roman" origin.[2] This impression was a natural result of the emphasis Mr. Seebohm laid, and very properly laid, on the late-Roman *villa* and on its resemblance to the mediæval manor: it was confirmed by the natural association in many minds of Mr. Seebohm's name with that of M. Fustel de Coulanges. But a more careful reading will show that Mr. Seebohm was even then not disposed to find in the Roman *villa* the last word in the discussion. He will be found arguing that "the tribal system" of early Germany itself showed a tendency toward a manorial organization.[3] The later "manor" may thus, as he frequently remarks,[4] have had "a complex origin"—in German tribal conditions on the one side, as well as in Roman methods of estate management on the other. So far, however, as the argument in the *English Village Community* goes, the "tribal" element is looked for mainly in the German migration: and, as a result of an examination of early Celtic evidence, Mr. Seebohm goes so far as to say that "the pre-Roman tribal system in Britain was evidently not the parent" of the later manor.[5]

[1] The Tribal System in Wales, being part of an Inquiry into the Structure and Methods of Tribal Society. By FREDERIC SEEBOHM, LL.D., F.S.A. London and New York, Longmans, Green & Co., 1895.—238 pp., and Appendix, 111 pp.

[2] See, for instance, Vinogradoff, Villainage in England, p. 33; Digby, History of the Law of Real Property, Preface to fourth edition.

[3] *E.g.*, p. 345.

[4] *E.g.*, pp. xiv, 346, 414, and "compound product," p. 422.

[5] P. 252; *cf.* p. 345, "The Welsh system was not directly approaching the manorial arrangement, except perhaps on the mensal land of the chiefs," and side

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Subsequent reflection has only strengthened Mr. Seebohm in his conviction that, by the side of Roman institutions, we have to make room, not indeed for a village communalism, — the stage of the discussion is past in which that could any longer be thought possible, — but for the tribal system as an almost universal factor in the formation of mediæval institutions.[1] His investigations for some time past have been devoted to the problem of the constitution of tribal society; and the results of these investigations, so far as they have gone at present, are now before us in *The Tribal System in Wales*. That Mr. Seebohm should begin with Wales is hardly perhaps what we should have anticipated, considering the conclusions of the earlier volume. The existence of a mass of "remarkably full and detailed Welsh documentary evidence" would hardly have furnished a sufficient motive, did not Mr. Seebohm now believe, whatever he may have thought twelve years ago, that "a substantial knowledge of the facts of one tribal system," even though it be a Celtic one, will serve as "a key with which to unlock the riddles of others."[2] He does not here express the further opinion, which we have some reason to believe he has come more distinctly to entertain, that the evidence now warrants our tracing the social evolution which culminated in the manor, behind even the Roman occupation, back into the purely Celtic period.

It must be said at the outset that *The Tribal System in Wales*, while not so startling and far-reaching in the scope of its argument as *The English Village Community* — and that was impossible from the nature of the case, — is a book which distinctly furthers the discussion, and makes at least one contribution to it of fundamental importance. As compared with the treatment of Celtic material by previous writers, like Sullivan, Maine and Skene, there is an evident gain in concreteness and consistency — a gain due, as it would seem, to the "economic" interest which compels the investigator to picture to himself the realities behind nomenclature. And the one permanent contribution is the account of the Welsh *wele*. The earlier book of Mr. Seebohm and the later have thus rendered like services to historical science: whether or no it has helped us with the "origins," each has made a great positive addition to our working knowledge of conditions well within the documentary period. Before 1883 nobody really knew, in any living sense, what the *virgate*

analysis. Nevertheless, even in this book, the Romans are spoken of in another place as "strengthening the manorial element on British estates," p. 411.

[1] The Tribal System in Wales, Preface, p. viii. [2] P. viii.

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was; now it has become a commonplace starting-point of discussion. And so the Welsh *wele* was all the time in the Welsh printed material; it was even in the Welsh chapter of the earlier book: but it had not obtained for itself a prominent and secure place in our thoughts until it was put in the forefront of the argument in *The Tribal System in Wales*.

Accordingly it must not be thought any detraction from the merits of the book to say that the whole argument of Mr. Seebohm calls for thoroughgoing criticism, and demands more documentary support, if it is to be accepted, than Mr. Seebohm has so far furnished. Mr. Seebohm himself does not claim finality; he "prints this part of the essay separately" with the express object of securing a consideration of the Welsh evidence "on its own merits"; and I am confident he will himself prefer that the piety of disciples take for the present a controversial form. Therefore, in the present article there will be given first a synopsis of the argument of each chapter, slightly rearranged occasionally, and then such critical observations as it may seem to call for. These latter will be hardly intelligible without the book, and may be skipped by the general reader.

Chapter I sets forth "the land system in Anglesey as described in the Extents" of 1294, 1339, 1351 and 1352, soon after the conquest of North Wales (1282), and when, as we find from these same documents, the pre-conquest conditions, so far as the mass of the people was concerned, were practically unchanged. Anglesey was then and is still, it must be remembered, a district, for Wales, "exceptionally agricultural." There were in that island four "manors," in the language of the Extents; and one of these is examined in detail. The "manor" of Aberffraw, which had been the seat of the princes of North Wales, consisted of two portions, a larger and a smaller, separated by a mile or so of ecclesiastical territory. The larger portion was made up, in the first place, of what the later Extents call the "demesne," including five carucates of (arable) land, three mills, two meadows and the fishery; and the demesne itself embraced a *Maerdref* ("the prince's home farm . . . cultivated by *villani of Aberffraw*") occupying four carucates, of *Trefcastell* ("the farm homestead of the Maerdref") with one carucate attached to it, and of *Garthey* (some fourteen little gardens of cottiers). In the same larger portion were also the holdings of the "free tenants," who appear as four sets of *heredes*, each set called a *wele* (literally "a bed"). The smaller portion of the manor, on the contrary, was exclusively occupied by "villeins," arranged in three

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groups or "hamlets." All the villeins were subject to money rents, to heavy payments in kind, and to the performance of a large number of day-works; while but little was due from the free tenants except money rents. Moreover, the tenure of the villeins, both on the *Maerdref* and on the outlying hamlets, was "of the nature of *tref-gevery*," *i.e.*, it involved some sort of *group responsibility* for dues. The use of this term serves to identify their position with that of the prince's *aillts* (to be spoken of later) as described in the Welsh Codes; though in the case of the *aillts* the feature of their position on which most stress is laid is the "regulation" by which *equal division* of the land was brought about within the group, with no recognition of individual claims to inheritance. Outside the manor proper there were, in the surrounding territorial division called a *cantref*, a number of *villae*, occupied some by free tenants and some by *villani* and some by both, paying rents in money and in kind to the prince. But of these we are told little, and our attention is concentrated on the manor itself.

The point most obscure in this account is the nature of the *Maer-dref* and the relation to it of the "villeins of Aberffraw." Was it like the "demesne" of an English manor? That is what is suggested by "the prince's home farm," [1] and similar phrases. Or was it like the *villenagium* of an English manor, and was there no separate "demesne" in the narrower sense? This is what is implied by the argument that "the land of the *Maerdref* was of the nature of *regulated*" or servile land.[2] Must there not rather have been something like the manorial demesne *and* something like manorial land-in-villenage? The latter, because we are told in the records of "tenements" from which were due considerable payments in kind; the former, because these tenants were also liable to some 900 "day-works," which must have been on land other than their tenements. A somewhat similar but less serious difficulty is presented by the position of the villeins of the smaller portion of the "manor": there also it would seem that there must have been some distinction between the tenements and the land on which the day-works were to be expended. These are, indeed, questions as to which Mr. Seebohm may reply that his readers, with the evidence set before them in the Appendix, may as fittingly hazard a conjecture as himself; and they are mentioned only to show that it is hardly so easy to picture the Aberffraw of the thirteenth century as Mr. Seebohm's pages might suggest. There are, however, a number of smaller

[1] The Tribal System in Wales, p. 15. [2] P. 18.

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points in the exposition more open to criticism. Such is the account of the relation of the "manor" to the *cantref* and its subdivision the *cymwds*. On page 1 there is a manor "in each cantref," while on page 4 there is one in each of two cymwds; *cf.* the vagueness, —"cantref *or* cymwd," — of pages 26, 90, 136, 149. We may question the appropriateness of the use of the term "Norman" for English officials of 1294 and half a century later (pp. 3, 5, 8, 51, 125, 135, 235, 237 *et al.*). As to the free tenants, it has to be remarked that at Aberffraw they seem, as Mr. Seebohm points out, to have all been attached to the service of the prince's household; and it is only by anticipating the argument of later chapters, and not from any clear indication in the evidence presented in this, that they can be called "successors of the Welsh free tribesmen,"[1] and their money payments a commutation for "the old food rents of the free tenants."[2]

In the second chapter, the most important in the book, Mr. Seebohm turns to the free tenants, and seeks to make their position clear by the aid of an Extent of the Castle and Honour of Denbigh of the year 1335. From this Extent it is evident that the land of that district was then held in *lecta* or *weles*, terms designating both the holders and the holdings. That these *weles* were groups of kindred descended from an ancestor whose name the *wele* bore, is clear from the lists of persons there given with the prefix *ap* to their names, from the use of *progenies* as an equivalent for *wele*, and from the frequent description of the tenants as *coheredes et participes*, or *coheredes et parcenarii*. The geographical areas called *villatae* were occupied by these *weles* in such a way that sometimes a *villata* was divided among several *weles*, sometimes a *wele* had shares of more than one *villata*, and sometimes a *wele* occupied the whole of a *villata* or even more. From each *villata* 20*s.*, the "tunc pound," were due to the lord; and the obligation was divided among the *weles* in proportion to their share of the *villata*. The *wele* itself was composed of four degrees of kindred; and the holdings — if not of the *weles*, as Mr. Seebohm thinks, at any rate of the primary fractions of them, which had been allotted to each son of the original ancestor and which were known as *gavells*[3] — remained undivided, although individual rights of user were carefully defined. The physical features of the Denbigh district favored a pastoral life and put difficulties in the way of an extension of tillage, being in these respects more characteristic of Wales as a whole than those of Anglesey.

[1] The Tribal System in Wales, p. 13. [2] P. 9. [3] P. 35.

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This fact, when combined with what we have learned of the *wele*, suggests that the free population was composed of

> communities of graziers of cattle, with rights of grazing . . . in different parts of the district; each community, with, it may be, its score or two of kinsmen, forming a complex unit, one in its relations to the other kindreds, but nevertheless with intricate internal hereditary and family divisions and rights.

There is evidence for *weles*, presumably of the same character, in other parts of North Wales and also in South Wales.

All this is admirably set forth; and that some such kindred holding was then general among fully free Welshmen can no longer be doubted. Mr. Seebohm, indeed, gives the impression that such methods were characteristic *only* of the fully free, unconsciously perhaps anticipating a subsequent argument. For *priodarii*, as the tenants are sometimes called in the Extent, does not, as Mr. Seebohm himself points out later, necessarily mean "free tribesmen," though to them it was most commonly applied;[1] and in 1335 there seem to have been as many *weles* "in tenura nativorum" as "in tenura liberorum."[2]

In the third chapter Mr. Seebohm begins to utilize the less trustworthy material presented by the Welsh Codes and Triads. He makes no attempt to determine their dates and varying values, but points out fairly enough that "if the Codes contain a body of customary law, which in natural course would produce the condition of things described by the surveys" already looked at, "their authenticity will be substantially confirmed." "If," also, "the legal traditions of more doubtful date and origin," the Triads, "supply reasons, in tribal sentiment or in more or less archaic details of custom, for the legal rules of the Codes, they themselves become evidence which cannot be wholly ignored." He then seeks to show that there existed in ancient Wales a sharp "distinction between tribesmen and non-tribesmen, primarily one of blood," and therefore well-nigh insuperable; and that this was the real significance of the later Anglicized and manorialized classification of "free" and "bond," *liberi* and *villani* or *nativi*. The tie of kindred among the tribesmen was exceedingly strong; and Mr. Seebohm traces several circles of kin-association. First of all, there was "the kindred to the ninth degree of descent," with its chief and other officers. A sentence, not free from obscurity, in one of the Codes lends some

[1] The Tribal System in Wales, p. 31; but *cf.* pp. 122, 123; and Appendix, p. 93, where care is taken to add "liberi" to "priodarii."

[2] See, *e.g.*, Appendix, p. 72.

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color to the assertion that this chief of kin was afterwards replaced by a "lord"; and we may go on to suppose that the practice described elsewhere in the Codes, according to which a son at the age of fourteen was brought to a lord to become his man and receive from him support, had taken the place of an earlier usage in which the young tribesman became dependent on the chief of kin—a chain of argument whose links are hardly strong enough to carry much weight. The Triads, it is next pointed out, speak of the *cyvarwys*, or rights acquired by every native Cymro on attaining the age of fourteen, as "five free *erws* (acres), co-tillage of the waste, and hunting"; and it is remarked that such statements "do not seem, on the whole, inconsistent with the facts just learned from the Codes." Indeed, Mr. Seebohm seems to regard the acquisition of *cyvarwys* as identical with the grant of maintenance by the lord (or chief of kin)[1]—a bold surmise, for at first sight the two things seem to have nothing in common but the age of the recipient, and, indeed, to belong to different environments, the one to a growing chivalry, the other to pastoral life.

The Codes not only reveal the larger kindred group, composed of relatives to the ninth degree of descent: according to Mr. Seebohm they present rules as to inheritance of land which serve to explain the lesser kindred to four degrees already disclosed to us in the *weles* of the Extents. It is laid down in the Venedotian Code of North Wales that brothers are to share land; that when all the brothers are dead, their children, being cousins, are, if they please, again to share equally; and again their children, being second cousins: and the same rule occurs in different terms in the Dimetian Code of South Wales. The final division and settlement of claims could not take place till all the grandsons had died; and therefore, until then, the original holding of the ancestor would "remain the external unit."[2] Hence the constitution of the *wele*.

This is a thrilling piece of construction; but there are a good many perplexities attached to it. In the first place, it is not clear that the distinction of the Codes between those of Cymric blood ("innate" Cymry) and those of alien blood is made more intelligible by being described as one between "tribesmen and non-tribesmen." Was there only one "tribe" among the Cymry? Then, again, though we may readily believe that the later distinction between *liberi* and *nativi* went back to a distinction between Cymry and non-Cymry, it might be well to strengthen this contention by the

[1] The Tribal System in Wales, p. 68. [2] P. 75.

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citation of unmistakable evidence, considering that Mr. Skene, with the same material before him, had no hesitation in regarding the *aillts* of the Codes (who confessedly answer, in part, to the later *villani*) as "native members of the tribe."[1] The conclusion based on the rules of the Codes as to re-partition of land-rights from generation to generation, until second cousins get their turn, is not greatly strengthened by the citation[2] from the Denbigh Extent to the effect that inheritance was allowed no further than the fourth degree; for this Denbigh record does not hint at renewed partitions, and deals only with the case of succession to a man who has no nearer kin than a nephew or cousin.[3] The latter part of the chapter is rendered uselessly bewildering, I cannot help thinking, by the introduction of a fresh gradation of kinship groups to the fourth and ninth degrees (not to mention another to seven degrees) for the payment of *saraad* and *galanas*[4] (like the Teutonic *wergelds*). As Mr. Seebohm points out later,[5] these are not coincident with the lesser and greater kindreds before considered, inasmuch as they are based, not like the latter on agnatic, but on cognatic relationship.[6]

The further we go, the more conjectural the argument becomes. Chapter IV deals with the relationship of the kindred groups to the occupation of land. Little is said, however, of the greater group, and practically the author confines his attention to the lesser group to four degrees, identified by him with the *wele*. His conclusion is that the head of such a kinship was the "landed person," the *uchelwr* or *breyr* (translated commonly "noble") of the Codes; that "in him were vested the rights of the *wele*"; that he represented it towards the outside world; and that the other members of the *wele* were not regarded as joint tenants, but, on the contrary, had nothing but rights of main-

[1] Celtic Scotland, III, 200, 205.

[2] The Tribal System in Wales, pp. 45, 73.

[3] On p. 45 Mr. Seebohm gives three brief paragraphs in English as a "passage from the Extent," referring in a footnote to Appendix B, i. This is probably a misprint, for there is no Appendix B. i. In B. h. (Appendix, p. 96) however, there is an extract from an Extent, of which the paragraphs on p. 45 are possibly meant as an abstract in English. But besides slight inaccuracies as to the amounts of the reliefs, the English makes the note refer to the sons and relatives of "a free priodaur," while the Latin says nothing of "free," and does say "si quis eorum seu quorumcumque aliorum *Nativorum*." The English also omits to translate the phrases *si filius non habuit, tunc* frater ejus aut nepos aut consanguineus *qui ejus heres propinquior fuerit.*

[4] P. 76.

[5] P. 101.

[6] Professor Maitland has some excellent observations on the urgent necessity of clearing up this matter of the historic relation of agnation to cognation, in the *Economic Journal*, V, 592.

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tenance. It must be confessed that this is a dangerously expeditious way of getting a landed aristocracy out of a patriarchal régime. That there is no direct evidence for it, Mr. Seebohm would doubtless allow. And there are at least three objections to it. The Extents do not indicate that there was usually some one distinct head to the *wele*, after the death of the ancestor from whom it was named: Mr. Seebohm himself speaks of the sons and grandsons succeeding in the proprietorship of occupation rights. Nor is there any indication that these Denbigh *weles* had grown or were growing into territorial lordships. And lastly, the lord or chief of kindred who is referred to[1] as providing maintenance for the young tribesman is, according to the argument of the previous chapter, not the head of the kindred to four degrees (which does not clearly appear in the Codes as an organized group), but the head of the kindred to nine degrees. Perhaps Mr. Seebohm thinks that, on "the passage from nomad life to settled occupation,"[2] the responsibility passed over from the head of the larger to the (supposed) head of the smaller group. If so, this is a position that needs to be stated and argued.

Assuming, however, this relation of the ordinary tribesman to the head of the smaller kindred as proved, Mr. Seebohm sets about explaining the long list of chattels which is given in one of the Codes in a connection which implies that they were private property. The ordinary tribesman is to be looked upon, he maintains, as

> a little dairy farmer with separate homestead, chiefly engaged in making butter and cheese; but with a car and yoke of oxen for carrying and ploughing, with corn crops growing on his five free *erws*, as well as corn in the bin. And thus his maintenance was not provided by his sharing in a common meal, or receiving doles in money or in kind from the common purse or produce of the kindred, but the result of his own labor and use of the cattle and *cyvarwys* which was received as his tribesman's right on his coming of age.[3]

This, however probable it may seem, stands or falls with the construction on which it is based.

So much then for the "free tribesmen," for whom, as no such words as "tribe" or "tribesmen" seem to appear in the Codes, it would probably be better to substitute some such term as "the free Cymry." In Chapter V we turn to the non-Cymry, the "strangers in blood," and their position according to the Codes. As a rule, says Mr. Seebohm, they appear, whether described as *taeogs*, *aillts* or *alltuds*, as

[1] The Tribal System in Wales, p. 92. [2] P. 87. [3] P. 99.

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"located either on the *maerdref* of a prince or in separate *taeog-trefs*," apart from the free Cymry — an account with which the situation at Aberffraw at the time of the English conquest is delightfully consistent. Now "the peculiar feature of the *taeog-tref* as described in the Codes was the entire absence of any rights of inheritance, all the *taeogs* sharing equally in the land"; [1] and as we have seen, the use of *tir cyfrif* to denote such a tenure connects these passages of the Codes with the Anglesey *trefgevery*, involving joint responsibility. Mr. Seebohm regards this peculiar kind of tenure as "the natural result of carrying out the tribal principle that there was no true kinship and inheritance among strangers in blood," *i.e.*, non-Cymry; and so he arrives at a clear-cut distinction, henceforth regarded by him as fundamental, between *tir cyfrif*, the "register" land of aliens on the one side, and *tir gwelyawc*, the land held in *wele* tenure by Cymry on the other. But though "regulated" *taeog-trefs* were the rule for non-Cymry, Mr. Seebohm allows that strangers "in better circumstances" were permitted to settle on the waste of a chieftain or *uchelwr*, and so in course of time to create non-Cymric *weles*, bound to the soil but also irremovable after the fourth generation. This enables him to explain the *weles* of *nativi* in the Denbigh Extent; but at the same time it comes very near surrendering his theory that the Cymry obstinately refused to recognize anything like kinship on the part of aliens. Nor can it be said that it is an altogether satisfactory explanation of the origin of the intermingled free and villein *weles* of Denbigh. Unfortunately the extracts from the Denbigh Extent printed in the Appendix appear to omit some of the passages concerning the "native" or villein *weles*. But even from those here given it is clear that the *weles* "of natives" sometimes paid *tunc;* [2] and yet *tunc* was a commutation of the *gwestva*, or payment in kind to the prince, which was peculiarly characteristic, so Mr. Seebohm argues in the next chapter, of the "free tribesman." [3]

Chapter VI deals with chieftainship. The designations used for the Welsh princelings suggest, argues Mr. Seebohm, that their authority was in most cases based on ideas of kinship — not a very conclusive argument. The scanty evidence as to the conquest of the western part of North Wales from the Gaels by the Cymry under

[1] The Tribal System in Wales, p. 117.

[2] *E.g.*, Appendix, p. 77. According to the quotation from the Venedotian Code, on p. 15, it was usually the duty of "the men of the maertrev" to "pay the tunc of their land."

[3] P. 154; and see the index, *s. v.* gwestva.

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"Cunedda and his sons," and of the western part of South Wales by his descendant Maelgyn, in the fifth and sixth centuries respectively, is next interpreted as showing that "tribal chieftainship" itself was "that of a family" — a sort of princely *wele*.[1] The evidence is not convincing; and it is strange that Mr. Seebohm does not lay more stress on that conquest itself, as furnishing a likely explanation of the existence, especially in those parts of North Wales, of a subject non-Cymric population. More satisfactory is the account, following the Codes, of the chieftain's food-rents from free tribesmen, commuted later for money, as well as the explanation, suggested by a comparison of the Codes with the Extents, of the later *villata* as "the geographical unit from which the *tunc* pound was due." The more burdensome food dues from non-Cymry are also set forth, but not in so clear a light.

This is the end of the main argument. Hitherto we have dealt with no material of assured antiquity earlier than the thirteenth century, though the Codes appear to present many "archaic" features. In Chapter VII Mr. Seebohm seeks to show the probability that the picture he has drawn is true for a much earlier period. The Book of Chad, belonging originally to Llandaff, contains in a handwriting of the ninth century a number of records of donations of land to the church; and two of these transfer a *tref* with a *census* resembling very closely in character the winter and summer payments from *taeog-trefs* set forth in the Codes. Growing still bolder in his flight, Mr. Seebohm finally rests upon some entries in a 12th century Life of St. Cadoc, which go back in substance, he believes, to the end of the *sixth* century! They do not claim to be contemporary records; but his conclusion (from an elaborate argument as to the recurrence of the same names as in Gildas, and as to their similarity to 7th century Continental documents) is that they may be relied on for a substantially true statement of what actually took place. Now these mention the grant of "*cibaria per tres noctes*," resembling the *gwestva* from free tribesmen, and also the payment from *villae* granted to the church of *pensiones* resembling in character the *taeog* food-rents. The implication is that where the food-rents existed, the rest of the system, of which in the time of the Codes they formed part, existed also.

Looking back now over the course of Mr. Seebohm's exposition, the reader may perhaps agree with the estimate with which this article began, *viz.*, that in forcing upon our attention the Welsh *wele*

[1] The Tribal System in Wales, pp. 143, 144.

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of the 13th century consists the chief value of his treatise. The theory which he puts forward of the origin of the *wele* needs further support: his theory of the relation of the *wele* to "tribal" organization, and that of the creation of social classes, cannot be regarded as at present much more than brilliant hypotheses. It is necessary, even if ungracious, to say this, because in the present chaos of ideas as to social origins, there is some danger lest what may be called "tribalism" may seize the command, *vice* the mark theory retired, before it has proved its authority. And as yet we hardly know what we mean when we speak of a "tribe." Mr. Seebohm rather assumes the notion than explains it.

Nevertheless we owe a debt of gratitude to Mr. Seebohm for the determination with which he has compelled what before was a bewildering jungle of Celtic nomenclature to yield up to us some sort of intelligible shape. We have now something to discuss that we can at least try to make a mental picture of: and that is a great gain. But Mr. Seebohm's work has a way of growing upon one on repeated reading; and it is not unlikely that further consideration may reveal a cogency in his argument not now as apparent as one would like. If so, my excuse must be that *The Tribal System in Wales* is not an easy book to read.

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REVIEWS.

Economic History of Virginia in the Seventeenth Century. By PHILIP ALEXANDER BRUCE. London and New York, Macmillan & Co., 1896. — Two vols., 634, 647 pp.

One who reads the literature in which are enshrined the facts of early American history often carries away the impression that they are at best petty and commonplace. The stage is small; the players are few. Startling events, such as are calculated to lend dramatic interest to the story, are exceedingly rare. The narrative works of early American writers are entirely lacking in literary form; while the largest, and often the most valuable, part of his material the historian must laboriously extract and piece together from the journals of courts, councils and legislatures, from relations, diaries, fragments of correspondence, account books, wills and church records. Much of this matter still exists only in manuscript, and is relatively inaccessible. But when for any section of the country, or period of time, or subdivision of the subject, the evidence is once well marshaled, the result, whether viewed from the standpoint of the growing imperial system or from that of the colonies themselves, will be found not devoid of interest or importance.

It is not often that this fact is brought out so clearly as by the volumes before us. Mr. Bruce has produced a work of 1300 pages on a single phase of the history of a single commonwealth during the earliest century of its existence. It is the history of the way in which wealth was produced in Virginia in the seventeenth century, with introductory chapters on the motives which led to its colonization and on aboriginal Virginia, and supplementary chapters on money and on the town. The London Company and the policy of the home government toward the colony necessarily receive much attention, while many details of administration and facts of a general social nature are introduced. The consideration of finance is properly excluded, though much of a public economic nature is necessarily included. Mr. Bruce has put a liberal interpretation upon his subject and on his relations thereto, and the result is a very thorough and satisfactory exposition of the economic history of early Virginia. Apparently all accessible material, both in print and manuscript, has been utilized, and that to the fullest extent. Everything of importance

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in the writings of Smith and his coadjutors, in the records of the London Company, in the pamphlets of Force, in the statutes of Hening, in the manuscript resources of the English Record Office, in county records, land patents, personal and family papers, has been wrought into the fabric of this treatise. Added to this is the familiarity with the subject attained by the author through a lifelong residence in the community of whose origin he writes. When brought into place in these pages, the seemingly petty details of the early records and relations assume an added significance. Minor details there are, but they are on the whole properly subordinated and made to serve a purpose. In the treatment of his subject Mr. Bruce has shown what is possible through a careful and exhaustive study of authorities. The ground here covered will not soon require cultivation by other hands.

In his treatment of the agricultural system, which occupies the larger part of the first volume, the author discusses, among other things, the selection of the place of settlement, the importance to the colonists of the cultivation of maize, the introduction of private property, and the efforts to introduce the cultivation of hemp, flax, the grape and other products which would diversify the industry of the colony. Not the least important chapter in the volume is that in which the acquisition of title to land is discussed. Of special interest in this is the history of the apportionment of grants on the basis of the "head right," or claim to fifty acres for the transportation of a servant or emigrant to the colony. From the dissolution of the company till 1705 this was, save in the Northern Neck, almost the only way in which a right to unoccupied land could be obtained. This fact led to the manipulation and abuse of the law by shipmasters and others and to an extensive traffic in claims. The methods of granting land patents by the company and by its successors in authority are described, as are also the steps taken to locate and establish boundaries. Careful estimates are given of the average size of estates in both the first and the second half of the century.

The most important feature of the agricultural system was of course the tobacco culture. Its origin, the policy of the home government towards it, its steady growth, in spite of efforts to check it, until it absorbed the energies of Virginia and her immediate neighbors, are described at length. It is very clearly shown that this was a natural development, arising from the fact that tobacco was a more remunerative product than any other which could then have been raised in Virginia. The extent to which the tobacco culture gave form to

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society in the colony is also abundantly illustrated, while in the chapters on labor its connection with slavery is more specifically treated.

From the view of Mr. Bruce concerning the policy of James I toward tobacco in Virginia, however, it is possible to dissent. He says (vol. i, p. 264) that "the whole object of James was to lay such charges on the importation of that commodity from Virginia as to place it at a serious disadvantage with the Spanish product." That the influence of Gondomar over the king led to a policy which favored the interests of Spain in all lines of intercourse, cannot be denied. But there was in England a legitimate demand for a certain quantity of Spanish tobacco, which arose from its superior quality, and which it was proper to satisfy. The insistence of the king that the total product from Virginia should be brought to England arose from his desire for the customs duty upon it, and was in harmony with the commercial policy of the times. This Mr. Bruce has shown. The granting of the monopoly of importation to Sir Thomas Roe, and later to Mr. Jacob, simply illustrates the development of monopolies which James had inherited from Elizabeth, but which the rule of favorites tended to emphasize. The policy of the king toward the tobacco trade seems, then, to have been dominated by fiscal motives more than by desire to favor Spain.

While tracing further the history of the tobacco question, Mr. Bruce, on page 282, antedates by ten years the formation of the Board of Trade and Plantations. The proclamation issued by Charles I, May 13, 1625, to which he refers, did not create a committee for regulating the affairs of the colonies, but continued in existence a commission specially formed on June 24 of the previous year to settle the affairs of Virginia. Nearly ten years passed before the declared intention of the king to establish a committee of general control was carried into execution. The proclamation of May 13, 1625, is printed in Rymer, *Fœdera*, XVIII, 72. The error reappears on page 283, where the commissioners for Virginia affairs are referred to under the date of 1626 as the "new commissioners for plantations."

The laborers of Virginia were the indented servants and the slaves. The former were in the seventeenth century a more important factor than the latter, though here again economic advantage led to the steady encroachment of the slave system upon that of free white servants. In his account of the economic conditions in England which occasioned the migration of laborers, Mr. Bruce follows

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Rogers. What he adds is an explanation of the causes which made the demand for labor in Virginia strong. The result was the steady flow of servants thither. The classes of these servants, the extent to which they were protected by the terms of their indentures, the means used to prevent their escape, the character of their life and work in Virginia, the rise of many of them in the social scale are described. At the beginning the slave was regarded simply as a servant for life (II, 65), and custom threw about him many of the guarantees which were secured to the whites by their indentures.

Finally, Mr. Bruce discusses the methods by which the colonists supplied themselves with manufactured goods, whether by importation or by manufacture at home. For reasons already indicated, by far the most important part of this subject is that which relates to the importation of supplies. In that connection the history of the trade of the colony is traced from the meagre "supplies" of the early years through the period of the "magazine" to that of individual trading after 1619. Besides trade relations with the mother country, those with the Dutch and with other English colonies are described. Abundant details are given to illustrate commercial methods, rates of profit, and the kinds of commodities in which traffic was carried on. The effects of the Acts of Trade are discussed, though without throwing new light on the subject. The relative justification of the policy is acknowledged, as is its success — so far, at least, as Virginia was concerned. The interesting fact is noted that Virginia, at least in the seventeenth century, failed to respond to one of the demands of English colonial policy, in that she produced almost no raw materials. Tobacco was not regarded as such, and efforts to encourage the production of naval stores did not become very prominent till the next century. But if tobacco made the production of raw materials impossible, it was equally an obstacle to the development of manufacturing in the colony, and insured to England, under the restrictions of the Acts of Trade, the monopoly of the colonial market.

The larger part of Mr. Bruce's references to the British State Papers are made to the Sainsbury *Abstracts* which exist in the Virginia State Library. That may account for an occasional inconsistency between his statements and those which appear in the *Calendars*. For example, the man whom he calls "Amis" on page 284 and elsewhere in the first volume, appears as "Anis" in the *Calendars*. Occasionally a date which appears as conjectural in the *Calendars* becomes definite in the text. According to the *Calendar*, the petition of Governor Yeardley to the Privy Council in April, 1627, bears the date of the

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day succeeding, rather than preceding, the meeting of the planters and adventurers at Sir John Wolstenholme's. For the use of the word Canada (I, 239 and elsewhere) where Acadia is meant, very slight justification could be produced. The authority on which the statement is based I have not at hand, but I query whether the words "expressly disallowed by the commissioners of the customs" (II, 464) could in any case correctly describe the action of that board upon a colonial law. That power belonged to the king in council, while the commissioners of the customs were subordinated to the treasury board, and had no control over legislation except through report and advice.

HERBERT L. OSGOOD.

The Building of a Nation: The Growth, Present Condition and Resources of the United States, with a Forecast of the Future. By HENRY GANNETT, Chief Geographer of the Geological Survey and of the Tenth and Eleventh Censuses. New York, The Henry T. Thomas Company, 1895. — 252 pp.

This book consists principally of a recapitulation of the chief results of the last census of the United States, profusely illustrated with maps, charts and diagrams. In the first fifty pages the author deals with the geography of the country, the organization of the federal, state and territorial governments, public debts, the budget, the army and the navy, pensions and public lands. Then comes a lengthy treatment of population, followed by shorter sections on agriculture, manufactures, mineral resources, transportation, and finance and wealth. The whole is put together in such a way as to give the impression of a book made to sell rather than of a serious effort to portray scientifically the progress of the country. A man of Mr. Gannett's official position should have given his readers the benefit of his training and experience so as to save them from the danger of confusion of facts, illogical inferences and unfounded assumptions. The book suffers from comparison with similar work done by the official statisticians of other countries, such as Rauchberg's *Bevölkerung Oesterreichs*, de Foville's *La France Économique*, Bodio's *Di alcuni Indici Misuratori del Movimento Economico in Italia*, and (in a more restricted field) Giffen's *Growth of Capital*. He might have learned something also from the recent work of his own chief, Carroll D. Wright, in the *Industrial Evolution of the United States*.

This may seem to be a harsh judgment of a book that is intended

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to be popular; but at the present time surely the world demands that even a book intended for popular use shall be scientific in method and tone. I think Mr. Gannett has failed to use his material with the necessary care and discrimination. He masses together the results of the Eleventh Census without much regard to their validity or relative importance; and in many cases he does not exercise the critical acumen necessary in dealing with the very complicated phenomena of population in the United States. Many examples of weakness in these two directions might be cited. He drags in the calculated "center of population," which never has had and never will have the slightest importance. He distributes the population according to altitude, to temperature and to rainfall, without explaining the connection of the two things in each case. Urban population is elaborately treated, but nothing is said in regard to the importance, cause and influence of the wonderful growth of the cities. Size of families is dismissed with a single page, although it receives great attention in the census. The preponderance of males in the United States is attributed solely to immigration, although an excess is found among the native-born both of native and of foreign parentage, where immigration cannot be a cause. Mr. Gannett's method of wage statistics (p. 178) is antiquated and fallacious; and his method of dividing the product between employees and capitalists has been denounced by his own chief[1] and is calculated to give rise to all sorts of misconceptions.

Some of Mr. Gannett's conclusions seem to rest on inadequate data. Thus on the basis of the mortality returns of large Southern cities, he attributes to the colored race a mortality "little less on the average than double that of the whites." Surely such evidence is not conclusive as to the general mortality of the blacks. Again, after comparing the very doubtful death-rate calculated by the Eleventh Census with the rates of European countries, he says: "From this showing it would appear that the Americans live longer than the citizens of any European country" (p. 156). But even if our death-rate were entirely trustworthy, that would not necessarily mean a longer average duration of life. So, in showing that the foreign-born are more numerously represented among criminals and paupers than in the population as a whole, the author forgets that the age distribution has a powerful influence on the numbers. Finally, the "distribution of wealth" (p. 228), certainly one of the most important considerations in reviewing the progress of the nation, is based

[1] Bulletin of the Department of Labor, No. 3, March, 1896.

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on estimates whose source and validity we have absolutely no means of testing.

The book is doubtless intended to be popular, in the ordinary sense, but even here the author overshoots his mark. The introduction declares: "In numbers, wealth, industry, enterprise, ease and dignity of living — in short, in all that goes to make civilization — the American Republic, at the end of the first century, stands the acknowledged leader of the nations of the earth." Elsewhere (p. 16) the author describes our country as "*facile princeps* in all the elements of national greatness." One reason for this prosperity the author alleges to be "wise and liberal legislation"; yet he believes in free trade, thinks the Indian has been badly treated, and is in favor of restriction of immigration.

His "forecast of the future" is optimistic. The government will increase in strength as the nation increases in numbers and in wealth; it will develop, but not on socialistic lines; the spoils system will be abolished; the masses of the people will be better fed, clothed and housed; immigration will be closely restricted; pauperism and crime will diminish; woman will no longer be secondary to man, but his equal, or rather his supplement, taking an active part in business and in government; spelling reform will be carried out; government will assume control of corporations as they increase in wealth and power; free trade will be established; we shall colonize Canada, Mexico and Central America; electricity will do all our work, from rocking the cradle to drawing the hearse, from running a sewing machine to operating a railway system.

This prognostication seems to be the subjective speculation of the author rather than a conclusion drawn inductively from the previous portions of the book.

RICHMOND MAYO-SMITH.

State Railroad Control, with a History of its Development in Iowa. By FRANK H. DIXON, with an Introduction by Henry C. Adams. Boston, Thomas Y. Crowell & Co., 1896. — 251 pp. and map.

This volume, the ninth in the Library of Economics and Politics which is being published under the direction of Professor Ely, treats of that important part of railway transportation which is conducted within the territorial limits of single states and is consequently subject to the legal restrictions and conditions imposed by state laws.

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The circumstances surrounding railway transportation in Iowa do not differ very materially from those in any other portion of the United States except, perhaps, in New England and on the Pacific Coast. Iowa is the sixth state in respect to length of railways, the fourteenth in ratio of mileage to population, and the eleventh in ratio of mileage to area. It is traversed by lines competing vigorously for the traffic of centers of population located without its borders, and by others depending principally upon the revenue to be derived from local business. It participated in the craze for railway construction that characterized the early period of railway development, and in the "granger" movement which followed. It substituted a railway commission, in 1878, for a maximum-rate law that had not proved satisfactory in practice. The law creating this commission was based upon that under which the Massachusetts commission had attained a high degree of success. Annual statistical reports, examinations of roads, rolling stock and bridges, and investigations of complaints were provided for; discriminations were prohibited; and the commission was required to report to the governor and the legislature. This statute remained in force slightly more than ten years, and was superseded by one establishing a commission with power to prescribe reasonable maximum rates and a classification for freight.

The history of each of these commissions and of the circumstances which led to the substitution of the stronger for the weaker form is carefully told by Dr. Dixon; and in making selections from the vast quantity of available material relating to the subject he has shown a degree of wise discrimination that should make the work of value to all interested in the problems of transportation, whether as legislators, railway managers or students. The author's conclusions would seem to favor the establishment of commissions under laws similar to those of Iowa and Illinois in all states except those located along the Northern Atlantic seaboard. He realizes, however, that the regulation of intrastate traffic is but a small part of the problem to be solved, and that adequate authority rests alone in the federal government.

Professor Adams's introductory sketch of the development of public sentiment regarding the proper relationship of government to the means of internal communication adds materially to the value of the work.

H. T. NEWCOMB.

WASHINGTON, D. C.

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Zur Gemeindesteuerreform in Deutschland, mit besonderer Beziehung auf Sächsische Verhältnisse. Von FR. J. NEUMANN. Tübingen, Verlag der H. Laupp'schen Buchhandlung, 1895. — xii, 303 pp.

La Progressività dell' Imposta, studiata sotto il Profilo Etico-Economico. Da FRANKLIN DE GROSSI. Con Prefazione del Prof. FERDINANDO PUGLIA. Palermo, Alberto Reber, 1895. — 227 pp.

Both these monographs are studies in what has been aptly termed the distribution of taxation — in other words, the problem of just taxation. In method they differ widely: one, by a well-known author, is largely statistical; the other, by a novice, is chiefly theoretical.

The text of Professor Neumann's monograph is in two parts; the first contains the substance of a lecture on the reform of local taxation in Germany, delivered by the author at Meissen in the summer of 1894, and the other is a most exhaustive description of the existing situation in Saxony. In preparing this descriptive matter the author not only examined the various local tax regulations, budgets and reports, but sent to the officials of all the towns and of the more important rural communes a circular requesting additional information on particular points. A vast amount of this detailed information, especially with regard to the relative importance of various forms of taxation in the different towns, is presented in voluminous notes which practically form a statistical appendix. Finally, there are four bibliographies, devoted respectively to taxation in Saxony, local taxation in general, German and Swiss "household budgets" and general works on taxation.

Family expense accounts are of interest to Professor Neumann chiefly because they enable him to show the regressive effect of taxes on consumption. For this purpose he selected 526 such accounts from various compilations which he considered reliable, but chiefly from Kuhna's *Die Ernährungsverhältnisse der industriellen Arbeiterbevölkerung in Oberschlesien.* The 526 families were then divided into six classes, graded from the rich and well-to-do, with incomes of more than 10,000 marks and of from 4,000 to 10,000 marks respectively (Classes I and II), down to the poor, with incomes of less than 800 marks (Class VI). Upon comparing these six classes with reference to their consumption of salt, sugar, coffee, petroleum, tobacco, liquors, bread and bread-stuffs and certain animal products, and estimating the enhancement of price in each

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case by reason of the imperial tariff, it appears that while the duties on these articles absorbed only from 1.13 to 1.26 per cent of the incomes of Class I, the proportion gradually increased with each lower class, until with those graded as "poor" it reached 4.51 to 7.28 per cent of the earnings. The taxation of salt was seen to fall twenty-eight times, and that of bread and bread-stuffs twenty-two and one-half times, as heavily upon Class VI as upon Class I. The taxation of liquors and tobacco, on the other hand, took a smaller proportion from the income of the "poor" than of the "rich," .71 per cent from Class I and only .42 per cent from Class VI. The highest proportion in this case was exhibited by Class V; but the usual steady progression from the richer to the poorer classes (*umgekehrt progressive Belastung*) in this case failed utterly. This result is important as showing that in Germany at least, and very possibly elsewhere also, *ad valorem* taxes on liquors and tobacco are much less objectionable from the standpoint of justice than taxes on consumption in general. The author's purpose, however, is simply to demonstrate the unjust regressivity of imperial taxation. Yet he does not demand the abolition, or even the diminution, of the indirect taxes, but proposes by way of compensation a more liberal exemption of the poorer classes from direct taxation, especially from the income taxes of the various commonwealths and their minor divisions. In connection with this investigation the author is not content simply to assume that the import duties fall upon the consumer, but by comparing the prices of certain food materials in Germany and England in different years before and after radical tariff changes, he shows quite a close correspondence between those changes and the fluctuations of prices.

Other statistics are given to show the extent of the unearned increment of ground-rents in German cities. From 1842 to 1894, of 110 houses in Frankfort which were not materially improved in the meantime, the rent more than doubled in seventy-six cases. In twenty-two cases it increased between 300 and 400 per cent, and in eighteen cases between 200 and 300 per cent; while in twenty-two of the thirty-four cases in which the rent failed to double, it increased between 50 and 100 per cent. In like manner the ground-rents in certain streets of Berlin increased between 1868 and 1877 from 78 to 107 per cent; while those of Berlin as a whole, estimated by subtracting the insurance valuations of the houses from the value of the real estate as shown by the rentals, increased from 1870 to 1890 in the ratio of 3.6 to 1. Professor Neumann believes that this unearned

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increment, being a case of *Conjuncturgewinn*, ought to be subjected to special taxation. He would not go as far as Mill and take the whole, or nearly the whole; but the unearned increment, he says, is analogous to an inheritance from a distant relative, and should be taxed, therefore, according to the German inheritance-tax laws, about eight per cent. This, of course, would be in addition to the usual land tax, and might be paid in installments extending over a period of years. Special assessments, he says very truly, are just and good as far as they go; but as a means of taxing the unearned increment they are quite inadequate, for the value of land increases independently of the improvements for which special assessments are levied.

The author enumerates three advantages possessed by the local tax systems of Saxony, as compared with other parts of the German Empire, especially the south: (1) the taxes are independent of the needs of the state government, and hence correspond exactly to the needs of the communes; (2) with a few exceptions there are no *octroi* duties; (3) the backbone of local taxation is the income tax. It is noteworthy that he places first the independence of commonwealth and local taxation, which has recently been attained also in Prussia, and which America, with the same problem of the division of revenues between national, commonwealth and local governments, must sooner or later adopt.

Dr. Franklin de Grossi, if one may judge from his maiden effort, is a young writer of great promise. In his doctor's dissertation on progressive taxation, which was written when he was scarcely twenty years of age, and which won him his degree with special honors, he exhibits, as Professor Puglia remarks in the preface, a "precocious maturity of thought." The monograph is certainly a remarkable production for one so young, and indeed would do credit to a veteran. It shows a wide familiarity with the Continental literature of the subject, French and German as well as Italian; nor are the classical English economists neglected. The writer cites Professor Seligman's article on "The Theory of Progressive Taxation" in the POLITICAL SCIENCE QUARTERLY (June, 1893), but seems not to have seen his longer monograph on the subject which was published a year later, several months at least before de Grossi's own work appeared, though possibly not before its completion.

After devoting a chapter to the general relations between ethics and economics, holding that they cannot safely be divorced, the author reviews the opinions of a large number of writers, both favorable and unfavorable to progressive taxation — in the one case to

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show the evolution of scientific thought on the subject, in the other to refute the opposing arguments. In his latter task he displays a considerable degree of controversial skill. He is a relentless critic, and he takes particular delight in pointing out the weak places in the arguments of Boccardo and Leroy-Beaulieu. The list of those in favor of progression he lengthens by including the names of Bentham and Mill, who went no further than to approve the exemption of the minimum of subsistence; but de Grossi holds that progression is the logical and necessary result of that exemption.

The author has a decided bias in favor of progression, but he would not carry it too far. He argues that the chief objections to progressive taxation are really objections not to the principle itself, but to the exaggeration of the principle; and that the dire results often predicted could not be true of a moderate progression. On the contrary, he holds that the adoption of progressive taxation would serve to ward off the more radical demands of socialism.

COLUMBIA UNIVERSITY. MAX WEST.

A Treatise on Money and Essays on Monetary Problems. By J. SHIELD NICHOLSON, M.A., D.Sc., Professor of Political Economy in the University of Edinburgh. Third edition, with new second part to A Treatise on Money. London, Adam and Charles Black; New York, Macmillan & Co., 1895. — xviii, 431 pp.

The form in which this book originally appeared and the transformations through which it has gone are discouraging to those who hold that scholars should maintain high ideals in book-making. The first edition contained "A Treatise on Money" and eight essays on monetary subjects; the second added half a dozen essays on similar topics and two on "Living Capital" and "Capital and Labour" (see this QUARTERLY, IX, 180); the third omits these last two essays, as unsuited in character to this collection, and adds to the "Treatise on Money" a second part, dealing with the relations of the supply of the precious metals to industry and trade. As now constituted, about four-elevenths of the book are devoted to the two parts of the "Treatise on Money"; while the remainder consists of two interjected essays on "John Law of Lauriston" and "One-Pound Notes for England," and ten essays in advocacy of bimetallism.

It is unfortunate for readers and for Professor Nicholson's reputation that he thus took "the risk of some repetition, instead of modifying and enlarging" the "Treatise," and incorporating into it the

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essential parts of the fugitive essays. As it is, even in a third edition, the reader is never sure that the author's exposition at a given point is not subject to qualifications expressed elsewhere. That Professor Nicholson's method makes possible serious misunderstanding of his position, may perhaps best be shown by comparing his latest exposition of the "quantity theory," in the new "Part" of this edition, with the criticism by Professor Laughlin, which appeared almost simultaneously in the *Journal of Political Economy*, of his exposition of that theory in the second edition. In this case, to be sure, as in most of the current controversies over the "quantity theory," the difficulties in the way of agreement upon any interpretation were intensified by the critic's fear of literalism and his predisposition toward a particular scheme of "rehabilitation"; but the fact remains that, if Professor Nicholson had concentrated his scattered remarks about this theory, even such a misunderstanding would hardly have been possible.

It is even more unfortunate that the author did not throw the argument for bimetallism into the form of a coherent monograph. Instead of a systematic treatment of the subject as a whole, he has given us a collection of literary fragments — addresses and contributions to periodicals — which, because of repetitions and omissions, can be convincing, or even readable, to but very few persons. Yet, judging from the notable success attained in some parts of his exposition, Professor Nicholson might have written two monographs on "Money" and "Bimetallism" which would have been very attractive and stimulating.

Some of the pages of the book bristle with points which, from the careless way in which they are made, irritate the careful reader. Thus, it is hard to understand his insistence on the facts that "silver is the basis or the constituent of half the money in the world" (p. 117), and that it "still forms the standard money of half the people in the world" (p. 127). According to his own views (p. 146), it makes a vast difference whether the metal is the "constituent" or merely the "basis" of the money referred to. Moreover, do these halves represent half the trade, industry or civilization of the world? When he speaks (p. 112) of the injuries inflicted by the "new silver" on the weavers of Lancashire, one feels that he forgets, even though his chapter on "The Effects of Great Discoveries of the Precious Metals" seems to show his indebtedness to, Cairnes's luminous exposition of the *general* effects of the "new gold" on England and other countries, as nations. Finally, when he conjectures (p.

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158; but see pp. 243 and 295) that a rise in prices would give a "generous impulse to trade," the reader wonders how far he is committed to inflation. Professor Nicholson's attack is bold, but his argument is vulnerable in more than the heel.

His distinctive argument for bimetallism, though presented in several other places, is perhaps best stated on pages 153 and 154. Under normal conditions, says the author, the present supply of gold would sustain higher prices, but for the depressing effects of the fall in the value of silver. When silver bullion thus falls, exports from India and other silver-using countries are stimulated, because, when such goods are sold in the gold-using countries, they yield a larger amount of silver than when sold in India. Similarly, the importation of English goods into India is checked, because, selling there for only the same amount of silver as before the change in its value, the return in gold to the English seller is smaller. But, since such conditions will inevitably arouse competition between the exporters of Indian goods, it must soon follow that their prices in England will fall — much in the same degree in which silver has fallen. Further, through the "sympathetic interaction of prices," a similar fall will occur in the prices of most of the related groups of commodities in gold-using countries. In such a chain of consequences, following the fall in the value of silver, is to be found the real cause of the fall in prices since 1873.

Probably all economists will agree with the author in his statement of the method by which a country paying more than the world price for silver will tend to increase its exports of other goods and increase its imports of silver; but few will follow him beyond this point. Insisting, as he does (p. 103), on the immobility of prices in the East, he asserts (p. 154) that silver prices have remained practically steady, and apparently assumes that they will so remain. This amounts to the assertion that India can forever absorb silver in exchange for goods. If this is the premise on which further arguments are built, what can be said of their stability? If the assumption, in this extreme form, is not justifiable, why does not the author express the limitations, and carry his analysis to its logical conclusion?

Even admitting that the Indian government cannot easily make its remittances to London (p. 111), and that "the continuous fall in silver . . . [has] been injurious to the manufacturers and traders of Lancashire" (p. 112), and that we are apt to share in the losses of our neighbors (p. 115), it by no means follows from Professor

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Nicholson's reasoning that England (and still less, other countries) ought to relieve India from the results of a backward civilization. Furthermore, so long as India continues to make large demands on the West for silver, so long silver will tend to become the staple export in exchange for Oriental goods : the larger the premium on silver in the East, the cheaper the West will get those goods ; and, under such conditions, lowered prices brought about by "substitution," will, after readjustment of industrial forces, mean a greater abundance in the West of the material sources of welfare. By the terms of his own hypothesis, there is little for gold-using countries to fear from the silver-lined cloud which Professor Nicholson has painted so black and threatening.

A. M. DAY.

COLUMBIA UNIVERSITY.

Produktion und Konsumption in der Volkswirtschaft. Aus dem Nachlasse von Prof. Dr. JULIUS LEHR in München ; herausgegeben und vollendet von Dr. KUNO FRANKENSTEIN. Leipzig, C. L. Hirschfeld, 1895. — viii, 261 pp.

This book constitutes one of the most recent additions to the larger work, *Hand- und Lehrbuch der Staatswissenschaften*, edited by Dr. Kuno Frankenstein, Dozent at the Humboldt-Akademie in Berlin. It is intended, however, that each volume shall, while fitting into its place in the general scheme, be in itself a complete and symmetrical treatise of a special subject. Thus we have here another of those attempts at system-building, so characteristic of German thought. Regarding the earlier works of this sort it could well be remarked by Schönberg, in the preface to the first edition of his *Handbuch der Politischen Oekonomie* in 1882, that they had then become somewhat antiquated. But with a revised edition of Roscher, with Schönberg's excellent work in its third and recently revised edition, with Wagner's *Handbuch* even now in progress, with the completion of Conrad's monumental *Handwörterbuch*, and with other recent German publications of much the same genus, it can hardly be said that the *opus magnum* of which the present volume is a part is coming to fill a long felt want. Meantime the German language still remains without an available elementary text-book on political economy.

This is not meant as a sweeping condemnation of the work. Indeed, the American might enviously wish that his language could boast of one such systematic treatise, if only "for the name of the

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thing." The plan of taking, as it were, a general inventory of the state of the science as taught by a given set of men at a given moment, while contributing nothing to the existing stock of knowledge, is not without advantages.

To the three main divisions of the book, "production," "consumption," and "the relations" of the two, are devoted 195, 40 and 10 pages respectively. In the first chapter is discussed the concept and essential nature of production; and following this are chapters devoted to land (or nature), labor and capital. Here is well presented a bird's-eye view of the various concepts expressed by these words, but at the close most readers, it seems likely, will be left with confused rather than clarified notions regarding the scientific as opposed to the loose or popular use of these terms. Then come interesting discussions of the division of labor and of capitalistic enterprise in general. The chapter following, on the special forms of business organization, constitutes about one-fourth of the book. It deals with the economic advantages and limitations of the various forms of capitalistic enterprise, ranging from that of an independent individual, through the various modifications of partnership agreements, to stock companies and productive coöperative associations. The legal provisons bearing upon the subject in various countries are briefly referred to, but in the main the presentation is of German experience and legislation. The chapter concludes with a consideration of large and small production, in which are portrayed the economic and social consequences of the competition of large factories with hand workers and house industries. Since it is the most concrete portion of the book and deals chiefly with German problems, this chapter is perhaps the one most valuable to American readers. Under the head of the social (or legal) conditions necessary for production, is given a review of the various theories regarding the origin and justification of private property, and regarding the right of inheritance. This adds nothing to the able presentation by Wagner — in fact, follows essentially his arguments and conclusions.

The next division deals primarily with the individual as the determining factor in consumption in existing society; discusses saving, extravagance, luxury, and the influence of circumstances, customs and fashion on expenditure; closing with a brief sketch of consumptive coöperative associations. The part played by the state in determining the consumption of goods is indicated; and then is treated "consumption in reality," that is, the quantities of leading kinds of

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goods consumed in different classes and countries, as shown by recent statistics.

The last brief division, on the relation of production and consumption, is a discussion of the question of overproduction and crises. The conclusion is that though various measures suggested cannot be expected to do more than gradually to mitigate the evils, the radical remedy of socialism involves unbearable consequences, and "there is no good reason to break with the existing order of society."

This conclusion is typical of the tone pervading the entire volume. Containing no new contribution to economic science or to social philosophy, and without any special novelty in the manner of presentation, the book nevertheless has value as representing the prevalent views on these subjects in German academic circles. The position taken on all questions is that of those professorial economists in Germany who reject the socialism of Marx, but concede a large and even increasing field to state activity. One approaching the book with this idea of its character will find its discussions judicial in tone and harmonious in the treatment of details. It may therefore be for many readers both interesting and helpful.

UNIVERSITY OF INDIANA. FRANK FETTER.

The Problem of the Aged Poor. By GEOFFREY DRAGE. London, Adam and Charles Black; New York, Macmillan & Co., 1895. —xvii, 375 pp.

This volume is a blue book put into decent form and dress for the library. Early in January, 1893, an English royal commission was appointed to consider whether any alterations in the system of poor laws is desirable in the case of persons whose destitution is occasioned by incapacity for work resulting from old age. A report was made by this commission two years later, February 26, 1895, after an examination of about seventy witnesses, including poor-law officials, representatives of friendly societies, workingmen, and experts who had given special attention to the subject of relief, such as Rev. Canon Blackley, Miss Octavia Hill and Professor Marshall. This evidence, with the report, appeared in the usual bulky form of the English blue book, although the report itself is fairly well digested in a little over a hundred pages. Like most of the blue books dealing with social questions, the report does not put forth any novel or striking conclusions. It received the signatures of all the members, though nearly every one of them deemed it necessary to offer an explanatory

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memorandum of his own particular point of view. An examination was made of the various schemes of pensions for the aged, but the commission was unable to recommend any of them, "in view of the financial and economic difficulties involved." The commissioners were, however, careful to state that they did not wish the report to be interpreted as a final statement of opinion, or to preclude the consideration of plans of a somewhat similar character if free from certain objections.

Mr. Drage has now taken the material thus collected by the commission, together with that gathered independently by Mr. Charles Booth and published in his work, *The Aged Poor in England and Wales*, and has endeavored to arrange it as far as possible according to a systematic scheme. He has also made an independent summary of the conclusions which might be drawn from the testimony before the commission. To this is added an account of the poor-law and old-age-pension systems of Germany and Denmark. The scheme of arrangement is an orderly one. It embraces the consideration of the extent of pauperism of the aged; its causes, moral and economic; the present means of meeting it by the poor law, by charity and by thrift; Booth's inquiry; and various pension schemes. Mr. Drage's particular conclusions differ in only a few points from those of the commission. When he does not agree with the inductions made by the commissioners, it is difficult, without constant reference to the report, to discover where the real points of difference are. The form of the *précis* has been maintained so rigidly that it is almost impossible to discover the boundary lines between the views of Mr. Drage and those of the commission. In regard to state pensions, he appears to agree with the commissioners in their objections. He does not, however, appear to have carried his investigations later than 1892; while, as the experiment in such pensions is so recent, it is hardly desirable to express an opinion without an inclusion of the very latest data.

This volume offers a wealth of suggestion to all interested in practical administration of charity, whether official or private. It also shows that a blue book can be worked over into a convenient form. *À propos* of this latter point, Mr. Drage might well have gone further with topical headings. Nor should he so studiously avoid paragraph headings, or so frequently allow paragraphs to run on their even tenor for four or five pages without a break. It is to be hoped, however, that he will continue his good offices, and give us further popular editions of now buried official documents.

DAVIS R. DEWEY.

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Hull House Maps and Papers: A Presentation of Nationalities and Wages in a Congested District of Chicago, together with Comments and Essays on Problems growing out of the Social Conditions. By Residents of Hull House, a Social Settlement. New York and Boston, T. Y. Crowell & Co., 1895.— viii, 230 pp.

Miss Addams's prefatory note tells us that these maps and papers are offered to the public, "not as exhaustive treatises, but as recorded observations which may possibly be of value because they are immediate and the result of long acquaintance." The papers are: "Map Notes and Comments," by Agnes S. Holbrook; "The Sweating System," by Florence Kelley; "Wage-Earning Children," by Florence Kelley and Alzina P. Stevens; "Receipts and Expenditures of Cloakmakers in Chicago compared with those of that trade in New York," by Isabel Eaton; "The Chicago Ghetto," by Charles Zeublin; "The Bohemian People in Chicago," by Josefa Humpal Zeman; "Remarks upon the Italian Colony in Chicago," by Alessandro Mastro-Valerio; "The Cook County Charities," by Julia C. Lathrop; "Art and Labor," by Ellen G. Starr; and "The Settlement as a Factor in the Labor Movement," by Jane Addams. There is also an illustrated appendix, which gives a brief description of the settlement itself and mentions its principal activities.

This appendix and the last essay will do much to explain to the uninitiated the meaning of the social-settlement idea, as it has found expression in and through the personality of a woman of rare executive ability, and of a sympathy so true and wide that it enables her to be just to the prosperous and well-to-do classes at the same time that she is working with and for the unprosperous. I cannot agree with all that Miss Addams implies with reference to trades-unionism (see p. 188, — Is the trades-union at bottom more altruistic than the trust?), but her statement of the attitude of the settlement toward it seems to me excellent. Of the work of the settlement in general, she tells us that it

> is pledged to insist upon the unity of life, to gather to itself the sense of righteousness to be found in the neighborhood and, as far as possible, in its city; to work toward the betterment not of one kind of people or class of people, but for the common good. The settlement believes that just as men deprived of comradeship by circumstances or law go back to the brutality from which they came, so any class or set of men deprived of the companionship of the whole become correspondingly decivilized and crippled. No part of society can afford to get along without the others.

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So much for the settlement, the existence of which has made possible the book under review. The immediate purpose of this book is to elaborate, by means of colored maps and auxiliary comments and essays, the national labor bureau's *Slum Investigation*, which in Chicago was entrusted to Mrs. Kelley as special agent. The plan followed is in general that of Mr. Charles Booth in his London studies. As a faithful picture of what *is*, and of what unquestionably *is evil*, this work should certainly help students of social science, statesmen and economists to find the way to something better. One thing seems to have impressed very deeply both Mrs. Kelley and Prof. Zeublin (see pp. 41 and 111), to wit, that

> the condition of the sweater's victim is a conclusive refutation of the ubiquitous argument that poverty is the result of crime, vice, intemperance, sloth and unthrift; for the Jewish sweater's victims are probably more temperate, hard-working and avaricious than any equally large body of wage-earners in America.

Prof. Zeublin's study of the Chicago Ghetto deserves high praise for its eminently judicial, yet unfailingly sympathetic tone; and also for a comprehensiveness that is especially remarkable in view of its brevity. This gentile's study of the Jews is the best study of a particular people in the book. Madam Humpal Zeman's essay on her people is a shade too apologetic, and the same thing may be said of the article about the Italians. The latter, however, contains a suggestion which, although not new, is too valuable to be passed over in silence — the suggestion that our Italian immigrants should be colonized in regions where they could engage in the work of farming, fruit and vine growing and stock-breeding, for which they are so well fitted. Signor Mastro-Valerio has himself done something in this direction for his countrymen, but he has exhausted his private resources in so doing. Turning to Miss Lathrop's essay, we find plainly portrayed, but without a shadow of sensationalism, the grave evils of the spoils system in the administration of public charities. Miss Starr speaks eloquently of the relation of art to freedom. Miss Eaton's paper is a supplement to Mrs. Kelley's exposition of the sweating system.

The paper on "Wage-Earning Children," by the inspector and the assistant inspector of factories in Illinois, is the most radical in utterance of any in the book, and when read in connection with the inspector's paper on the sweating system makes a terrible picture of the evils of child-labor. In view of these evils — to the health

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and happiness of the child and its future earning capacity; to the economic status of the adults who are compelled to compete with these children; and to the community itself, which must support the broken-down victims of premature labor and perhaps also their ill-nourished progeny, and must also, if its government be democratic, face the dangers of an uneducated, discontented and inflammable body of citizens—in view of these evils it would seem that the remedy proposed by Mrs. Kelley and her associate is entitled to respectful consideration, although to very many readers it will seem to savor far too much of paternalism. They say:

> The legislation needed is of the simplest but most comprehensive description. We need to have: (1) The minimum age for work fixed at sixteen; (2) School attendance made compulsory to the same age; (3) Factory inspectors and truant officers, both men and women, equipped with adequate salaries and traveling expenses, charged with the duty of removing children from mill and workshop, mine and store, and placing them at school; (4) Ample provision for school accommodations; money supplied by the state through the school authorities for the support of such orphans, half-orphans and children of the unemployed as are now kept out of school by destitution.

They ask if such provision would not

> be vastly cheaper in the end than the care of the consumptive young grinders? or than the provision which will be inevitably required for the support of the cripples turned out by the stamping works? or than the maintenance of the families of those who will be superannuated at thirty-five because they are now allowed to do in the clothing shops the work of men, in the years when they ought to be laying up a store of energy to last a normal lifetime?

This is a hard question; and it is in raising such questions as this, which the facts brought to light make very practical and urgent, that the value of these essays lies.

FREDERIC W. SANDERS.

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Zur Frage der Arbeitslosen-Versicherung. By Dr. GEORGE SCHANZ. Bamberg, C. C. Buchner, 1895. — x, 384 pp.

Dr. Schanz, editor of the *Finanz-Archiv* and author of numerous monographs on industrial and commercial history, among which is *Englische Handelspolitik gegen Ende des Mittelalters*, has recently made a thorough-going inquiry in regard to the conditions of non-employment. Of late years insurance has been turned to in Germany as a remedy for many of the evils affecting the

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workman, as witnessed in the three great schemes already adopted for insurance against accident, sickness and old age. Now there is substantial agreement in Germany in favor of the first of these; there is fairly strong support, both practical and academic, of the second; while as yet there is no unanimity of opinion in regard to the third. Nevertheless, even this last experiment is making converts, so that it is no wonder that insurance is regarded by some as the universal solvent for industrial ills. Such a remedy for the evil of non-employment is being seriously discussed on the Continent, and has been the more approved by many because of the apparent success of the out-of-work benefit in trades-unions. Outside of the experience of these organizations, there is little material for study save the results of a few isolated and on the whole unsatisfactory schemes recently tried in three or four Swiss cities, as in Berne and Basle. Such experience as there is, however, in the way of insurance for non-employment, Dr. Schanz has diligently studied. His inquiry covers particularly the experience of trades-unions in England, and of the *Gewerkvereine* and *Gewerkschaften* in Germany; and the statistical exhibits bearing upon this branch of their work are complete and satisfactory. As yet the out-of-work benefit has been but little developed in Germany; and, for that matter, benefits of any sort have found but little place in workingmen's organizations in that country. The total amount expended in benefits in 1894 by eighteen *Gewerkvereine* having 67,058 members was but 73,050 marks, or about thirty cents per member; and of this less than one-half was strictly *Arbeitslosen-Unterstützung*. For the *Gewerkschaften* no more can be said.

The question of the practicability and expediency of generally instituting such insurance applicable to all classes of the working population is first considered, and is answered by Dr. Schanz in the negative. From the technical standpoint fundamental objections arise; for in non-employment we do not have to deal with a succession of industrial phenomena of sufficient uniformity in character and regularity of sequence to admit of framing definite provision for the future. This is a point which needs to be more carefully kept in mind in all the loose discussion that is now going on in regard to insurance. For successful insurance projects it is necessary that the losses insured against should have a regularity sufficient for prediction; and experience shows that there is such regularity in the occurrence of deaths, fires, accidents, and even of sickness. This has not yet been discovered in the recurrence of

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cases of non-employment as a whole, although it may be found in a few occupations of a certain fixed type. In another respect insurance against non-employment differs radically from insurance against death, sickness or accident. In these latter cases we are dealing with risks constantly diminishing; in the former we are dealing with a risk apparently growing more and more serious. Society constantly produces new conditions making for non-employment which not even the acutest student of industrial life can foretell. Changes in international trade relations, to say nothing of domestic fluctuations, make an everlasting industrial flux. Again, it is a cardinal principle in insurance that a benefit should not accrue to one who is intentionally responsible for the loss. In case of non-employment, it would be well-nigh impossible to determine the amount of the workman's responsibility or his good faith in endeavoring to seek new employment. Trades-unions recognize this element of fraud and are obliged to guard against it by most stringent rules. This danger would, however, be much greater in unorganized departments of industry, where the pride and *esprit de corps* of members has not been developed to deter workingmen from dishonorable acts which would burden their associates. Moreover, what is to be regarded as a proper explanation for non-employment? Suppose that the workman is unable to keep employment on account of bad industrial training!

In Dr. Schanz's discussions he takes up technical considerations which would not arise in a country where there is already a complicated system of insurance machinery. Among such considerations are the difficulties connected with the insurance of rural workmen, the insurance of women, the character of the administration, *etc.* Many minor difficulties arise here, but all of them may be passed by; the main difficulty is that of determining the worthiness or unworthiness of the applicant for insurance.

A consideration of the various objections leads the author to frame an independent plan which he terms "compulsory saving." The gist of this is that every employer should pay into the bank already established, the *Krankenkasse*, a certain specified sum, not less than thirty pfennigs a week, for each person employed by him. For artisans of the building trades dependent upon the seasons, the payment shall be on a different basis — say ten per cent of their wages. Of this amount the employer will pay some definite proportion, but the larger part is to be deducted from the wages of the workmen. After the end of the first year a low rate of interest may

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be paid on the amounts thus compulsorily deposited; and if more than 100 marks have accumulated, the surplus above that amount may be freely drawn out by each workman on his bank book. One hundred marks, however, are reserved against the time of non-employment. Thus the workman has an interest to save that specified sum; after that he is free to do as he will with all his earnings. Such a plan would also provide an incentive for the workman to make special deposits. In case of non-employment, the reserve fund, if less than 70 m., may be drawn upon for 5 m. weekly; if from 70 to 100 m., for 7 m. weekly. The cost of the administration is to be borne by the state and the commune.

The advantages of this system of insurance are described in detail; and special emphasis is placed upon the enlistment of the workmen's interest, the avoidance of entanglement in case of strikes, and the freedom left to the workman in choosing a new position. Such a plan, moreover, would not burden those who are seldom without employment, or the more diligent and alert. Individualism is conserved. Nor is the success of this plan absolutely dependent, as in case of insurance projects, upon statistical data.

There is a considerable amount of statistical material gathered in this volume. There are also copious extracts from the rules of workmen's organizations concerning out-of-work and traveling benefits, and from the rules of employment bureaus. The criticism which Dr. Schanz has to make of the employment bureau as a method for alleviating the evils of non-employment, is very appropriate. Those who have followed the discussion of this question in Germany at all carefully are aware of the absurd emphasis that has been placed, during the past two or three years, upon the part that such bureaus are expected to play in constructive industrial reform in Germany. This has probably been due to the fact that they have not yet been experimented with so fully as in England and in this country, and that consequently their possibilities appear larger than they do to us. The employment bureau is a necessity, and is capable of doing much more than it does; but even in this country, it needs a thorough reorganization, and there are limitations, as Dr. Schanz clearly sees, to what it can finally do. Non-employment is not local. Adjustment of the labor supply must be made, if at all, over large areas; and here the employment bureau can play but a limited part. Finally, the employment bureau cannot meet the needs of those who are engaged in seasonal occupations.

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Organisme et Société. Par RENÉ WORMS. Paris, V. Giard & E. Brière, 1896. — 412 pp.

La Pathologie Sociale. Par PAUL DE LILIENFELD, avec une Préface de RENÉ WORMS. Paris, V. Giard & E. Brière, 1896. — xlvii, 335 pp.

Les Lois de l'Imitation ; Étude Sociologique. Par G. TARDE. Seconde édition, revue et augmentée. Paris, Félix Alcan, 1895. — xxiv, 428 pp.

La Logique Sociale. Par G. TARDE. Paris, Félix Alcan, 1895. — xiv, 464 pp.

De la Division du Travail Social. Par ÉMILE DURKHEIM. Paris, Félix Alcan, 1893. — ix, 471 pp.

Les Règles de la Méthode Sociologique. Par ÉMILE DURKHEIM. Paris, Félix Alcan, 1895. — viii, 186 pp.

Psychologie des Foules. Par GUSTAVE LE BON. Paris, Félix Alcan, 1895. — vii, 200 pp.

Le Transformisme Social. Essai sur le Progrès et le Regrès des Sociétés. Par GUILLAUME DE GREEF. Paris, Félix Alcan, 1895. — 520 pp.

La Cité Moderne ; Métaphysique de la Sociologie. Par JEAN IZOULET, Paris, Félix Alcan, 1894. — ix, 691 pp.

Les Sciences Sociales en Allemagne ; les Méthodes Actuelles. Par C. BOUGLÉ. Paris, Félix Alcan, 1896. — 172 pp.

Annales de l'Institut International de Sociologie. Publiées sous la Direction de René Worms, Secrétaire Général. I: *Travaux du Premier Congrès*, Tenu à Paris en Octobre, 1894. Paris, V. Giard & E. Brière, 1895. — xxx, 388 pp.

That the influence of Comte is still vital and fruitful in the intellectual life of France is proved in many ways, but in none more conclusively than in the serious study of systematic sociology. In this department of knowledge Frenchmen and Belgians have in recent years accomplished more than the scholars of all other countries together, and of the total scientific activity of France a conspicuously large share has been given to sociology. That eleven such volumes as those named above should in less than three years come from the publishing center of a single country, is a phenomenon to challenge

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attention. Each is an important production; more than one are works of unmistakable originality; at least one is destined to live, as a contribution of the highest value to the philosophy of the human mind.

In a review of sociological literature which was published in this journal in June, 1892, three different conceptions of the scientific explanation of society were examined. One was analytical and historical: it was the view that social institutions, conventions, beliefs, sentiments and sanctions are the subject-matter of sociology, to be interpreted and justified by their utility. A second conception was ethnographic: it was the view that social phenomena may best be explained in terms of race differences and conflicts. A third conception was biological and psychological: it was the view that the ultimate explanation of society must go beyond the analysis of historical institutions and beyond race conflicts, back to psychological and biological facts.

In this third conception there lay the possibility of two distinct schools of sociological thought, which have since become plainly distinguishable. One is biological, accepting Mr. Spencer's idea that society is not merely analogous to an organism, but that it is an organism. The social biologist, for such rather than sociologist he should be called, takes his categories and his nomenclature directly from anatomy and physiology. The second school is psychological, conceiving of social relations as phenomena of feeling and thought, and for the most part using the familiar language of the moral sciences, somewhat enriched by terms drawn from recent psychology. In the volumes now under consideration both schools are strongly represented.

To M. René Worms must be accorded the credit of having worked out the biological conception of society more thoroughly and consistently than any other writer has ever done. His book consists of an Introduction and five Parts. In Part I the general theory of organic life and of society is presented. Objections to the biological interpretation are here considered in detail and with much ability. In a final chapter of this part M. Worms, in stating the true difference between a society and all lower organisms, emphasizes the psychological character of the bond that unites the social units, but he insists that the difference is merely one of degree. The cells of an animal organism may be supposed to have an incipient consciousness. Thus at this point, M. Worms, like Mr. Spencer, leaves on his reader's mind the impression that it is after all a question

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whether society in strictness is an organism or a superorganism. The second Part describes the anatomy of societies. Here M. Worms strongly argues that the social "cell" is neither the family nor the man and wife, but is the single individual who, in his feelings, ideas, opinions and habits, is a microcosm of society; and the reader inevitably asks if this conclusion does not transform the biological into a psychological sociology. Part III is given to the physiology of societies; Part IV to the origin, development and classification of societies; and Part V to the pathology, therapeutics and hygiene of societies. Thus the biological sociology is here completely worked out, and the student who rejects it can have the satisfaction of knowing that he does so only after he has thoroughly acquainted himself with it.

In the work of Dr. von Lilienfeld we have the first opportunity to judge whether the biological conception of society can throw any new light on practical social questions. That "the body politic" is subject to "disease" is a very ancient notion. But is anything gained by taking a figure of speech literally and converting analogy into identity? Dr. von Lilienfeld's pages are rich in learning and in wisdom. He has investigated thoroughly and thought deeply; and no one can dip into his chapters without being impressed with the value of his reflections on the economic inequalities, the political corruption, the moral degeneration, the educational imbecilities, the religious indifference of the present day. A thousand hints are thrown out by the way on which statesmen and reformers might well reflect. But there is nothing in the entire book that could not have been better said in a simpler language than that of an ingeniously elaborated "social pathology." To describe fads and crazes, degeneracy, outbreaks of insanity, crime and lubricity, as "anomalies of the social nervous system," is only calculated to hasten the wear and tear of the nervous systems of individuals; and to argue that wealth is a "social intercellular substance," is simply to set up a doctrine of sociological transubstantiation.

The publication, in 1890, of the first edition of M. Tarde's treatise on *The Laws of Imitation*, brought a profound and original philosophical thinker to the notice of all students of psychology, and gave a new direction to the study of sociology. Sweeping aside all notions of society as "a great being," and all the jargon of biological analogy, M. Tarde addressed himself to an examination of the psychological aspects of social phenomena in their simplest forms. These he thought he found in imitation. Languages, beliefs, manners, morals,

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laws, arts — all these could be resolved, he held, into one of two types of imitation, namely, custom imitation, or the imitation of the old, and mode imitation, or the imitation of the new. The first sociological task, therefore, was to discover the laws of imitation, and to their formulation M. Tarde's volume was devoted. This second edition is a proof of the general interest which these views have awakened. The text has been slightly revised and a new preface contains a reply to criticisms.

In the volume on *The Social Logic* M. Tarde undertakes to show how imitations and their products are combined in a social mind and a common social activity. In the mental activity of an individual that which is imitated, M. Tarde said in his earlier work, is always a belief or a desire. In society beliefs and desires are combined in systems of thought and of action, to designate which M. Tarde gives a wide extension to the words "religion" and "government," including philosophies under the one and ruling social ideals under the other. The means of combination, he asserts, are languages, deities and conceptions of social ends to be achieved. Part I treats of the laws of combination among beliefs and volitions under four heads, namely: Individual Logic, The Social Mind or the Social Logic in its Static Manifestation, The Historical Series of Logical States of the Social Mind, and The Laws of Invention. The last-named chapter is a study of the essential process and nature of progress. It is a necessary consequence of M. Tarde's thought that he classifies societies according to the ends or ideals that they seek to achieve, and not, as Mr. Spencer does, by their prevailing activities. In a second part M. Tarde examines in detail the sociological phenomena of language, religion, the affections and sentiments, political economy and art. The volume, as a whole, is not so great a work as its predecessor, but nevertheless it is a profoundly thoughtful and richly suggestive book.

The central thought in M. Durkheim's system of sociology is that the mere massing of men acts as a coercion upon the thought, feeling and volition of every individual. The problem of sociology, therefore, he believes, is to discover the modes and results of the impression of the individual by the social aggregate. M. Durkheim's work is thus essentially an elaboration and a psychological analysis of the jurist's notion of sanction, or, rather, it is a study of the origins of sanction in an unconscious social coercion which at length becomes conscious. Consistently with this thought M. Durkheim finds the cause of social organization — the division of social

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labor — in the growth of the social mass. This conclusion is more than doubtful. It contradicts the economic principle that the division of labor is antecedent to a great increase of wealth on which, of course, a great increase of population depends. M. Durkheim argues further that the growth of population brings about the substitution of a social organization by differentiation into specialized associations, for the older type of organization by federation, or coalescence, of tribe with tribe or of state with state. Here, again, there is reason to think that he mistakes effect for cause. He calls attention to an important truth, however, when he shows the close association of these phenomena, and, further, with the phenomena of an increasingly definite social consciousness.

The little book on the *Rules of Sociological Method* abounds in useful suggestions. The rules laid down cover the observation of social facts, the distinction of the normal from the pathological, the discrimination of social types, the explanation of social facts, and the development of proof.

M. Le Bon's study of the *Psychology of Crowds* is a demonstration of the truth that a crowd always unconsciously coerces its individual members and that in the crowd the individual usually loses all sense of responsibility. M. Le Bon examines in detail the sentiments, the morality and the beliefs of crowds; and then more particularly studies the characteristics of various kinds of crowds, as the criminal, the legal, the political and the parliamentary. His conclusion that crowds are less rational than individuals, and in their character usually nobler or baser than individuals, is true of mobs, and of assemblies at any given moment, but it is not necessarily true of assemblies that alternately meet and disperse during the prolonged consideration of an important question.

Professor De Greef is one of those tireless writers who are so well equipped with knowledge and so fertile in suggestion that even when they are turning out bulky volumes every year or two they are sure to say many things that are worthy of serious consideration. His essay on the progress and the regress of societies is a thoughtful and learned study of the interrelations of systems of thought and systems of organization in history. No one who is interested in the great practical issues of socialism and social ethics can afford to pass it by. His conclusions are neither optimistic nor pessimistic. Good and evil, progress and regress, are neither mere fatalities nor the playthings of free will. They depend on conditions which man can in a degree control, and which, therefore, it is the business of sociology

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to reveal and of the reformer to establish. Happiness is essentially a relative and a variable phenomenon. Above all, it is a social phenomenon. It is a function of a normal organization of activities and interests. In the exposition of these relations Professor De Greef again presents his familiar theory that economic changes are antecedent to cultural, cultural to juridical, and juridical to political changes. Not all sociologists will accept this explanation. There is reason to believe that in advanced societies the order of development reverses the order of genesis, so that although economic relations are older than juridical, and juridical older than political, yet in modern nations progressive developments must have their inception in cultural activities, and react, through politics and law, upon economic relations.

Two thoughts stand forth prominently in Professor Izoulet's treatise on *The Modern City*. One is that the city is at once the highest product of social evolution, and, for practical purposes, *is* society. The other thought is that the population of the city has become so sharply divided into an intellectual and cultured class on the one hand, and a working class on the other hand, that the integrity of society is threatened. At all times the city shelters within her walls two kinds of enemies, the fastidious and the brutal, — the mystics who desert her and the cynics who assail her; she has to defend herself against secession and against a murderous aggression. The history of the city, her past, may be summed up in a word: it has been the attempt of the élite to evict the crowd. Is her future to be the attempt of the crowd to evict the élite? Perhaps so; in any event, the problem of the city, Professor Izoulet maintains, is to establish an equilibrium of justice between the élite and the crowd. This can be accomplished only if the élite remain loyal to the city, and if both élite and crowd undergo the psychological evolution and develop the social consciousness that association should create. The greater part of the volume accordingly consists of a study of the evolution of the social mind of the city. It would be a better book if it were less rhetorical and less diffuse.

Germany has made but few contributions to systematic sociology, but in German writings on folk psychology, ethics, political economy and jurisprudence a great deal of good sociology is to be discovered. M. Bouglé has rendered a useful service by his review of some of this material. He has made no attempt to cover the field, but has chosen rather to present somewhat fully the work of four writers, each of whom represents the sociological treatment of a dis-

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tinct branch of social science, namely: Lazarus, the psychology of peoples; Simmel, ethics; Wagner, political economy; and Jhering, the philosophy of law. In choosing these four names M. Bouglé has shown the ability to discover sociologists who are such in fact, irrespective of their labels.

If the International Institute of Sociology shall offer annually as worthy contributions to science as these which compose the first volume of its annals, it will take an excellent rank among respected learned associations. The twenty papers are by such strong and well known writers as Tarde, Ferri, Gumplowicz, Novicow, Mandello, Simmel, Fiamingo, Lilienfeld, Sir John Lubbock, Sir Douglas Galton, Combes de Lestrade, Worms, Kovalevsky, Toennies, Kranz, Dorado, Posada and Abrikossof, and cover a wide range of questions, from the purely theoretical and systematic to those of a more practical nature, such as the relation of sociology to public-school education, the ownership of land, unemployment, socialism, anarchism, justice and criminal law.

F. H. GIDDINGS.

Traité de la Juridiction Administrative et des Recours Contentieux. By E. LAFERRIÈRE, Vice-Président du Conseil d'État. Paris, Berger-Levrault & Cie., 1896. — 2 vols., xix, 724, 709 pp.

A study of comparative administrative law shows that there are two methods of establishing direct judicial control over the acts of the administrative authorities. The one that is provided by the English law and is to be found in all English-speaking countries, consists in devising a special set of remedies to be administered by the ordinary courts. The other consists in the establishment of special courts to which appeal in proper cases may be taken from the acts of the administration. This system, established in France during the early part of this century, has had great influence on the administrative legislation of the Continent. No better expounder of this Continental system, as it may be called, could be found than Mr. Laferrière, the author of the work under consideration, who is the vice-president of the French council of state and therefore the chief justice of that body when it acts as a purely judicial authority.

M. Laferrière's book is in the main written for the French lawyer; but his interest in the philosophical and historical aspects of his subject has led him to include in his treatment of it both a comparison of the institutions established in order to provide a direct judicial control over the administration in all the important countries of

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Europe and in the United States, and a sketch of the historical development of the purely French system. The former cannot fail to be of the greatest value to the student of comparative politics, while the latter will interest the historian. That the portion of the work devoted to foreign law is so clear and so free from mistakes of importance is strong evidence of the value of the work done by the *Société de Législation Comparée*, upon which M. Laferrière has largely relied.

The two points brought out in the book which are of greatest interest to foreign, and particularly to English and American readers are: first, the similarity between the French and the English development, notwithstanding the different results which have been reached; and, second, the wider and more effective remedies offered by the French as compared with the English law, notwithstanding the fact that in France special courts have been established for their application.

The similarity in development is seen in the fact that all the judicial remedies against arbitrary administrative action were worked out during the time when the bodies which administered them were under the control of the administration. Thus, in England the courts of king's bench and chancery had worked out the theory of the extraordinary legal remedies, such as the writs of *mandamus*, *certiorari* and *habeas corpus*, and the equitable remedies like the injunction, before 1701, when the judges became independent of the crown. The crown made no opposition to the growth of this system of remedial justice before 1701, because of the fact that it had large powers of control over the judges, as witness the famous ship-money case, and the case of the five knights. In France during about the same period, however, the courts had a tenure independent of the crown, owing to the fact that the position of judge was regarded as property, which might be bought and sold and was hereditary. The crown, therefore, did not permit the ordinary courts to exercise anything like the same jurisdiction over its officers that the courts of England possessed, but established special courts under its control for the exercise of these powers. This system, the foundation of which was laid by the absolute monarchy, has been further developed by all the various governments which France has had during this century. The special bodies established for the purpose being theoretically merely parts of the administration, the executive could make no objection to the development of the present system of remedies. Finally, in 1872, soon after the foundation of the

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present republic, the council of state received the power to make its decisions independently without the necessity of obtaining the approval of the chief executive; and in 1875 the members of the council were given a tenure practically independent of the executive.

The early relation with the executive has not failed to have an influence on the character of the remedies which these administrative judges have worked out. Being really a part of the administration, and devoting their lives to the study of administrative questions, they have of necessity had a wider knowledge of the real needs of the administration, and at the same time have had less of the reluctance which the English and American courts have felt since they became independent of the executive about limiting the discretion of administrative authorities. The result of these two facts has been the offer to the individual citizen of much wider remedies against both illegal and arbitrary administrative action. Thus, the French administrative courts have had no hesitation in taking jurisdiction of matters like tax-assessment valuations, which, in this country at any rate, are regarded in the absence of some particular statute giving jurisdiction as exclusively within the discretion of the taxing officers. Again, the French administrative courts have worked out an elaborate doctrine relative to the responsibility of the government both for contracts and for the tortious acts of its agents, which the American and English courts, with their fear of encroaching on the discretion of the administration, have been unable to do. Finally, the French courts, basing their action on a very general statutory provision, have elaborated a most effective remedy against illegal administrative action on the part of even the highest state officers in the appeal for "excess of powers and violation of the law." This goes directly to the council of state, the highest administrative court, and is not only very simple and untechnical in its operation, but, like most French judicial remedies, quite inexpensive.

What has been said is not meant to imply that the French system is perfect. In fact, the mere existence of two separate kinds of courts often necessitates conflicts of jurisdiction, which of course tend to diminish the effectiveness of the system. But it cannot be doubted that in this respect the English and American law has much to gain from the French law. That we have already borrowed from it can be seen when we call to mind the existence of courts and boards of claims, and of boards of general appraisers, established by the recent Customs Administration Act, which are really administrative courts. That we shall in the future borrow more, cannot well be

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doubted by those who have studied our system of judicial control over administrative action, which has defects amounting almost to a denial of justice. When the time comes to take another step in the direction indicated by the acts establishing our courts of claims and similar bodies, no book will be found more useful than that of M. Laferrière, who has exhibited not only a complete and detailed knowledge of the French law but also a rare comprehension of foreign legal systems. Finally, it is almost needless to say that M. Laferrière's book is characterized by that clearness and simplicity of style which makes the reading of French books a pleasure. F. J. GOODNOW.

The Constitution of the United States at the End of the First Century. By GEORGE S. BOUTWELL. Boston, D. C. Heath & Co., 1895. — xviii, 412 pp.

Commentaries on the Constitution of the United States, Historical and Juridical. By ROGER FOSTER. Vol. I. Boston, The Boston Book Company, 1895. — vii, 711 pp.

The first of these works may be dismissed with few words — words not directly of criticism, but rather of description. The book includes, in the first place, a reprint of the fundamental instruments of our constitutional history and our present constitutional law — the Declaration of Independence, the Articles of Confederation, the Ordinance for the government of the Northwest Territory, and the Constitution of the United States. All that distinguishes this reprint from any other is that under each of the provisions of the Constitution of the United States cases are cited interpreting the same, and that several cases are likewise cited under a few of the provisions of the Articles of Confederation and of the Northwest-Territory Ordinance. These cases seem to have been intelligently selected.

In the second place, the book contains a fairly good digest of the cases interpreting the provisions of the Constitution of the United States. All that can be said in regard to this part of it is, that good judgment is manifested in the selection of cases, and the decisions which they contain seem to have been correctly stated and fairly well distinguished from the dicta.

The book also contains a very brief, not to say superficial, history of the progress of independence, the period of confederation and the enactment of the Northwest-Territory Ordinance. In none of

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these things, however, does there appear to be any sufficient *raison d'être* for the volume. It is simply another book upon an old subject by a most reputable author, without anything new in it, except, perhaps, the citation of a few recent judicial decisions.

The second of the works under review, while containing considerable reprinted matter and partaking somewhat of the nature of an *omnium-gatherum*, bears, on the whole, a very different character from that described above. It is voluminous and discursive. It contains much valuable material, but the material has not been always well thought through and correctly interpreted.

The present volume, which is evidently to be followed by several more, treats chiefly of the history and the political science of the constitution. There is nothing in it which throws any new light upon that history or marks any advance in that theory. On the contrary, the author's historical and philosophical appreciation of the constitution appears reactionary. This is to be observed at the very outset in the conception, or rather want of conception, of the essential character of the Revolution and of the Continental Congress. The older works of Story and Curtis are far sounder upon these subjects — much more nearly "up to date." One of the clearest evidences of the crudeness of the present work in regard to these subjects is the fact that its author does not appear to attach any scientific import to the facts that the Convention of 1787 ignored the Articles of Confederation in regard to the law of amendment, and itself prescribed an entirely new method and majority for the adoption of its own propositions. A proper appreciation of these acts of the convention and of the general obedience to them reveals more clearly than anything else — we might almost say than everything else — the real nature of our political history, our political science and our public law. The failure to comprehend correctly and thoroughly these most important features of our political development is evidently the cause of the prodigal liberality, to say the least, of the author of this work upon the questions of "State sovereignty" and "secession," which makes his argument, in some parts, read more like Dogberry's charge to the watchman than like the logic of a publicist. Perhaps the most serious fault, of Mr. Foster's work, valuable as it is in many respects, is its attitude in regard to the original validity of the Thirteenth and Fourteenth Amendments to the Constitution, and in regard to the Reconstruction Acts of Congress. Upon these subjects its conclusions are, it seems to me, not only erroneous, but pernicious. The argu-

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ment of the author is, if I correctly understand it, that the Thirteenth and Fourteenth Amendments were not legally adopted unless the ratifications of them by certain "States," which had professed to secede from the Union and had not yet been recognized by Congress as reëstablished in their relations as "States" of the Union, should be counted as lawful and valid acts; but that if these ratifications were so regarded and counted, these "States" were thereby recognized as "States" of the Union, and were consequently not subject to reconstruction.

The reasoning is specious, and it has some appearance of resting on facts. It is a fact that the then Secretary of State, Mr Seward, in his announcements of the ratifications, appeared to count these "States" among the whole number of "States" and among those voting for the adoption of these amendments. But not counting them, either in dividend or quotient, the requisite number for valid adoption was attained. Now, was not an error committed in considering them at all? And is it not the true principle of our public law that when the people resident within a "State" declare secession and erect a local government hostile to the Union, the former "State" *ipso facto* ceases to be a "State" of the Union, but by no means ceases to be a part of the Union? What is a "State" of the Union? It is nothing but a particular form of local government in our federal system of government. That form of local government may be changed or destroyed without the slightest necessary effect upon the territory of the Union. We are not confined in our political system to the alternatives of a "State" of the Union or a "State" out of the Union. There are parts of our Union which have never been under the federal system of government, and there always have been such parts. Nor is there the slightest real logical difficulty in holding that those parts which have once been "States" of the Union may cease to be such and yet remain parts of the Union, parts which, according to our Constitution, have nothing to say about the amendment of the Constitution, or the election of the president, or the choice of the members of Congress, or even about their own local government. The apparent logical difficulties in the way of this only sound conception of our political system have been occasioned by the confusion of the question of territorial integrity with the question of the form of local governmental organization. Mr. Foster outstrips all of his particularistic predecessors in the intensity of this error, and arrives at the startling and dramatic conclusion that "the Reconstruction Acts must consequently be condemned as unconstitutional, founded on force

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not law, and so tyrannical as to imperil the liberty of the entire nation should they be recognized as binding precedents."

Mr. Foster deals in the same high-handed way with the Civil Rights Act of 1866. He declares that it "was clearly unconstitutional," and undertakes to bolster up his dictum by citing The Civil Rights Cases in 109 U. S. Reports. Now these cases do not deal with the Civil Rights Act of 1866 at all. They simply decide that those sections of the Act of 1875 which provide for "the full and equal enjoyment of the accommodations, advantages, facilities and privileges of inns, public conveyances on land and water, theatres and other places of public amusement" by "all persons within the jurisdiction of the United States," without discrimination on account of race, color or previous condition of servitude, are unconstitutional. The court distinctly said in this opinion:

> Congress, as we have seen, by the Civil Rights Bill of 1866, passed in view of the Thirteenth Amendment, before the Fourteenth was adopted, undertook to wipe out these burdens and disabilities, the necessary incidents of slavery, constituting its substance and visible form; and to secure to all citizens of every race and color, and without regard to previous servitude, those fundamental rights which are the essence of civil freedom, namely, the same right to make and enforce contracts, to sue, be parties, give evidence, and to inherit, purchase, lease, sell and convey property, as is enjoyed by white citizens. Whether this legislation was fully authorized by the Thirteenth Amendment alone, without the support which it afterwards received from the Fourteenth, after the adoption of which it was reënacted with some additions, it is not necessary to inquire. It is referred to for the purpose of showing that at that time (in 1866) Congress did not assume, under the authority given by the Thirteenth Amendment, to adjust what may be called the social rights of men and races in the community; but only to declare and vindicate those fundamental rights which appertain to the essence of citizenship, and the enjoyment or deprivation of which constitutes the essential distinction between freedom and slavery.

Such loose citation as Mr. Foster is guilty of in this matter tends to render the book worthless as a digest as well as unsound as a treatise.

The book also manifests a lack of discrimination in the mind of its author between the functions of military and civil officials. Mr. Foster bestows generous eulogy on General Hancock's order No. 40, of November 29, 1867, on assuming command at New Orleans — a paper which Mr. Benton would probably have described as containing a political stump speech injected into

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the belly of a military order. The business of a military officer is to execute commands, and not to announce political policies, even though he may know that his military superiors sympathize with him in politics. This noted order gave dangerous encouragement to a rebellious-minded population, though certainly it was not so intended by the loyal-minded Hancock. And Mr. Foster's book is likely, whether so intended or not, to encourage the ex-Confederates and their descendants in the belief that the Confederates were constitutionally and legally right in the struggle over the questions of secession and reconstruction, and were only overborne by brute force. If it has this effect, it will prove injurious to the very people towards whom it appears to be so generous. This belief is a chief cause of the social ostracism which has been practiced by the inhabitants of the South against incomers from the North, and which has driven away, in many instances, the wealth and enterprise so sorely needed in the impoverished section. The strengthening of this belief is, moreover, bound to excite the hope for the rectification of the wrong and the ultimate triumph of the right. There is nothing which could happen to the people of the South so beneficial as the general spread of the conviction that the Confederates were not only defeated in the great struggle, but were in error in their views about it. Chewing the bitter cud of fancied wrong produces both spiritual misery and material stagnation.

This volume undoubtedly repeats the doctrines held by a considerable party of men at the North when secession and reconstruction were active issues, and its chief value to this generation of the men of the North is, that it will recall the difficulties with which their loyal predecessors had to contend, in the rear as well as in the front, in their gigantic struggle to save the Union and the Constitution.

J. W. BURGESS.

Reconstruction during the Civil War in the United States of America. By EBEN GREENOUGH SCOTT. Boston and New York, Houghton, Mifflin & Co., 1895. — x, 432 pp.

The most favorably disposed reviewer of Professor Scott's book must own to some perplexity in treating it. The Greek worthy who carried about with him a sample brick of the house which he wished to sell, at least had finished the house; but the author of this book offers only a foundation stone of the structure which he means to build. This volume contains, we are assured in the

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Preface, "certain things necessary to be known before taking up the subject and pursuing it in the sequence of time." Yet as half the space is devoted to the period from March 1, 1861, to March 1, 1865, it is fair to suppose that the later treatment will be on the same lines.

In judging this somewhat ambitious attempt to clear up the most complicated subject in American history, the first question is: What has been the author's material? The temptation to tabulate the authorities to which reference is made in the footnotes is not to be resisted, for it throws much light on the author's conception of his task. The sources to which reference is made are twenty-three in number, and include 145 citations in all, distributed as follows: *Congressional Globe*, 50; *Elliot's Debates*, 17; *Federalist*, 16; *Constitution of the United States*, 15 (or thereabouts); United States court cases, 15 (including ten references to Chisholm *vs.* Georgia); McPherson's *Rebellion*, 6; the works of Jefferson, Franklin, John Adams, Webster, Hamilton and Benton, 14 altogether; *Journals of Congress*, 5; state constitutions and similar documents, 5; Benton's *Debates*, 2; *Annual Cyclopædia*, 2; *Madison Papers*, 2; *American Museum*, 1. The only commentators with whom the writer indicates acquaintance are (besides the *Federalist*) Story, Upshur and Alexander H. Stephens. Of the historians he mentions Parkman, Curtis, Hildreth, Carr (*Missouri*), Pitkin and Arnold (*Life of Arnold*). Twenty-three more references are incomprehensible or blind, as for instance: "Parliamentary Papers (118) 7"; Lalor, "Compromises, I, 551"; "Madison to Jefferson." The total citations of sources and secondary authorities seem to be 197.

It will be noticed that this list does not include Ford's *Pamphlets on the Constitution*, or the Nullification Papers, or any Congressional documents, or a single contemporary newspaper or pamphlet, or any speeches outside of Congress, or the authorized edition of Lincoln's works. There is no evidence presented that the author knows Tucker's Blackstone, or Calhoun or von Holst or Cooley's Story, or the *Republic of Republics*, or the treatises of Bateman and Hurd, or even the indispensable articles by Dunning on "The Constitution in Civil War," or Whiting's *War Powers*. The author makes no false pretences; but certainly we must doubt whether such a foundation as he constructs can bear the weight of a "History of Reconstruction."

When the argument is examined, the reason for devoting half the volume to an account of the constitutional basis of the Union up to 1820 is manifest. The author appears on pages 229, 230 and 235

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to throw in his lot with Black and Buchanan, in his assertion that "the power to coerce a state is not among the powers granted in the Constitution," and that "any invasion of a state would be lawless." That position is one which was then and is now vulnerable. But even if right, it does not alter the fact that states were "invaded" and were "subjugated."

The next logical step, as set forth in the preface and elsewhere, is that between 1865 and 1877 the ancient governments of the subdued states were finally subverted, and new ones were erected in their places. The author notices, but dismisses as a "sophism" the counter-doctrine of Lincoln: "The states have their status in the Union, and they have no other legal status" (p. 241); but his main point is that suppression of the rebellion was not logical.

Of what use now is the discussion of the threadbare questions as to the powers of the Confederation, the doctrine of implied powers, Hamilton's view of popular government, or the Missouri Compromise, as a means to the settlement of the responsibility for and rightfulness of Reconstruction? The great defect of the book is that it does not seem to recognize that during and after the Civil War the country had to confront an extra-constitutional state of affairs — that no theory of the Constitution could fit the circumstances. Thaddeus Stevens was a violent and unscrupulous partisan, but in his famous speech (quoted on page 256) he does brush away the cobwebs from the question of coercion. Sumner's doctrine of state-suicide was unstable, but it had the merit of recognizing that states engaged in rebellion thereby put themselves into a new category. Every theory of Reconstruction is untenable; but some theory had to be adopted. It is not just that Abraham Lincoln, the only man who had a practicable plan up to 1865, should be dismissed with the sneer: "He felt his power, and his contempt of the representatives of the states and the people grew apace" (p. 389).

HARVARD UNIVERSITY. ALBERT BUSHNELL HART.

The Origin and History of Contract in Roman Law down to the End of the Republican Period. (Being the Yorke Prize Essay for the year 1893.) By W. H. BUCKLER, B.A., LL.B., of Trinity College, Cambridge. London, C. J. Clay & Sons; Cambridge, University Press Warehouse, 1895. — vii, 228 pp.

Any attempt to reconstruct the Roman law of contract as it was before the Twelve Tables — to decide in what cases the Tables merely

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restated existing customs, and in what cases they introduced new rules — must, with the scanty evidence at our disposal, be somewhat inconclusive. There is a better chance of success in an honest effort to determine the original significance and scope of the provisions of the Tables, as compared with the meanings read into them by interpretation, and to discern the lines along which the interpretation moved and the mode in which its new conceptions were attained; but even here there is ample room for difference of opinion. Disputable, finally, is the extent to which the way had already been cleared, by civil interpretation, for the sweeping innovations of the prætorian law. It is only toward the close of the Republican period that the student begins to feel firm ground beneath him. Before that time his sensations resemble those of a man who strives to keep his footing on logs driving down a river. He has, here and there, solid facts to support him; but the facts are disconnected parts of the law, and the whole law is in motion.

Mr. Buckler's reconstruction has positive merits of a high order. It is based on careful study, not merely of the Roman juristic literature and of the inscriptions, but of the non-juristic literature as well (Plautus, of course, is a mine of information). The author has also plowed his patient way through a great number of German and Italian treatises, although he has unfortunately overlooked a few books that would have helped him more than some of those that he has read. In discussing the various more or less imaginative theories set up by his predecessors, he shows a characteristic English sanity of judgment. His own conclusions are obviously independent, and where they differ from those of the Continental writers they are, as a rule, thoroughly defensible. The book is a gratifying evidence of the solidity of the work which the English universities are doing in Roman law.

Detailed criticism of such a book would necessitate another of almost equal size. I shall confine myself to indicating what seem to me the chief defects in a generally admirable piece of work. Mr. Buckler seems too much disposed to discover sudden innovations in the development of the law of contracts, although he declares in his preface that "contract is the handmaid if not actually the child of trade." He assumes — rather arbitrarily, I think — that several provisions of the Twelve Tables that may have been declaratory of existing custom were deliberate legislative modifications of custom; and in discussing the contracts of the *ius honorarium* he does not recognize the extent to which the new prætorian remedies were

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probably based upon earlier though less adequate remedies devised by juristic interpretation. He does not clearly see, or at least he does not clearly show, to what an extent the widening of the field of contract in the prætorian law was preceded by the recognition of obligation *quasi ex contractu* in connection with agreements or pacts which were not yet regarded as contracts. Nor does he make it clear how largely the ground of contract was covered, not only in the civil law but probably in the early prætorian law also, by actions of tort — by the extension of the action of theft, or by the action of fraud. In the field of the consensual contracts, for example, Jhering has advanced strong reasons for assuming that the earliest remedy *inter socios* was the *actio doli;*[1] and Mr. Buckler himself recognizes that the *actio familiae herciscundae* may have discharged, in some cases, the functions of the later contractual *actio pro socio.* The analogous *actio communi dividundo*, however, filled the gap more completely. Both of these actions of partition were regarded by the Romans as quasi-contractual. Again, Mr. Buckler himself recognizes the probability that the quasi-contractual *actio negotiorum gestorum* was older than the contractual *actio mandati.* Passing to the field of real contracts, Mr. Buckler conjectures (rightly, in my opinion) that the earliest action *ex causa depositi* was the *actio furti*, but he unaccountably narrows this remedy to the case where the depositary had committed *furtum usus* (pp. 86, 87, 188). *Furtum usus*, however, is a refined and therefore relatively late conception (*cf.* p. 185); in early times it must have seemed natural to regard the refusal to restore a thing left for safe-keeping as a theft of the thing. For the second, or quasi-contractual stage in the evolution of the real contract, we have ample evidence. Not only was a *condictio* given *quasi ex contractu*, on the ground of unjust enrichment, in all cases where something of value had passed in consequence of an express or implied promise (*causa data, causa non secuta*), but even when all pacts of this kind had been recognized as contracts, and a special action had been devised for their enforcement, the older quasi-contractual remedy survived. Of course this last step in the development of the real contract (*actio praescriptis verbis*) lies outside of Mr. Buckler's period; but the earlier steps lie within it; and surely the question whether, in the case of the few special real contracts of the Republican period, there was not an intermediate quasi-contractual stage ought to be considered. In the case

[1] Schuldmoment im römischen Recht (1867); reprinted in Vermischte Schriften (1879). See especially pp. 187–191.

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of these contracts it should be noted that the recognition of unjust enrichment would lead to practically the same result as the recognition of contract. From either point of view there would be a duty to restore the amount lent (*mutuum*), or the article loaned (*commodatum*), or deposited (*depositum*), or pledged (*pignus*). It was only in the further development of the real contract that cases arose where the contractual claim ran for a performance that was not simply restitution. Mr. Buckler has not correlated the evidence which we possess on these matters; and while his sketch of the formal contracts is almost unexceptionable, his account of the origin of the consensual contracts leaves something to be desired, and his explanation of the development of the real contracts is quite unsatisfactory.

It is, I think, because Mr. Buckler has failed to see the historical basis of the real contract (one-sided performance viewed as unjust enrichment if the other party fails to perform his part) that he pronounces the distinction between the real and the consensual contract "arbitrary" (p. 187). A few pages back he declares that the real contract was a consensual contract in which "consent was signified in a particular way, *i.e.*, by the delivery of the object in respect to which the contract was made" (p. 178). Nothing could be more thoroughly un-Roman than this description. To the Roman view, even in the following period, the fact that consent had been signified was no reason for recognizing the existence of a contract, save in the narrowly limited class of the four consensual contracts. Outside of this class something else was necessary. Consent *plus* the employment of certain forms of question and answer made a verbal contract; consent *plus* a certain kind of written entry made a literal contract; consent *plus* the passing of something of value made a real contract.

Mr. Buckler's mode of citing from the *Digest* is peculiar to him, and is at first somewhat confusing. He uses "fr." not as the Germans do, to designate the "fragments" or excerpts of which each title is composed, but to indicate the paragraph divisions within the fragments which were introduced by the jurists of the middle ages. Thus, where a German writer would cite fr. 7, § 3, D. *de operis libert.* 38, 1, Mr. Buckler cites 38 *Dig.* 1, 7, fr. 3. I can see no reason for this innovation, nor has it any warrant in the practice of other scholars, Continental or British. Muirhead cites *Dig.* xxxviii, 1, fr. 7, § 3; Holland, *Dig.* xxxviii, 1, 7, 3; Moyle, *Dig.* 38, 1, 7, 3. Mr. Buckler's book is carefully printed and well indexed.

MUNROE SMITH.

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RECORD OF POLITICAL EVENTS.

[From November 11, 1895, to May 10, 1896.]

I. THE UNITED STATES.

FOREIGN RELATIONS. — Incidents under this head have occupied a very conspicuous position in our political life during the period under review. First in importance has been the controversy with Great Britain over **the Venezuelan boundary question.** In his Annual Message at the opening of Congress, December 3, President Cleveland announced that Great Britain had been called upon for a definite answer to the question whether she would or would not submit the entire boundary dispute with Venezuela to arbitration, and that an answer was expected shortly. The answer reached Washington three days later, when the president was absent on a hunting trip. On December 17 Mr. Cleveland, having returned, sent to Congress the correspondence, accompanied by a message. The correspondence consisted of a long dispatch from Secretary Olney, dated July 20, 1895, and two notes in reply from Lord Salisbury, both dated November 26. Mr. Olney's dispatch first reviewed the history of the dispute between Great Britain and Venezuela, and the efforts of the United States to bring about an equitable settlement. In this review he put especial emphasis on the inability of Venezuela to establish her claim through any but peaceful methods; her persistent but unsuccessful efforts to reach a settlement, first by convention and then by arbitration; Great Britain's refusal to arbitrate except on condition that Venezuela first relinquish all claim to that part of the disputed territory lying east of the arbitrary Schomburgk line; and the fact that the honor and interests of the United States were involved in the controversy, so far as British aggression upon Venezuelan territory was alleged. The dispatch then proceeded to set forth at length the right of the United States to interpose, first, on the general principles of international law, and second, on the special principle of the Monroe Doctrine. The interest of the United States in excluding the European powers from forcibly intruding in American politics was asserted in vigorous terms, and it was declared that the acquisition of Venezuelan territory by Great Britain, under cover of a boundary dispute, would be such an intrusion. The United States, therefore, was entitled to know whether the charges of aggression brought by Venezuela against Great Britain were well founded; and peaceful arbitration of the territorial dispute was the only way in which this question could be properly determined. That Great Britain insisted on excluding from arbitration part of the territory claimed by Venezuela, might cover an aggression by the former

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government as to that part. The United States was justified, therefore, in protesting against Great Britain's attitude, and in demanding a definite answer to the question whether she would submit the whole territorial dispute to arbitration. Of Lord Salisbury's two notes in reply, the first dealt only with the principles on which Mr. Olney claimed for the United States the right to interfere in the Venezuelan matter. Lord Salisbury argued that the Monroe Doctrine had no bearing on the Venezuelan question; that even if it were distorted by the United States to apply to that question, no other power was bound to consider it, as it formed no part of international law; that the government of the United States, while entirely justified in interposing in any controversy where its interests were affected, was not "entitled to affirm . . . with reference to a number of independent states for whose conduct it assumes no responsibility, that its interests are necessarily concerned in whatever may befall those states simply because they are situated in the western hemisphere." And the note concluded with an emphatic denial of Mr. Olney's assertion that a "permanent political union between a European and an American state [is] unnatural and inexpedient." In his second note Lord Salisbury recited the history of the territorial controversy from the British point of view, representing that the failure to agree upon a line by convention had been chiefly due to Venezuela's excessive and baseless claims, and to the lack of a stable government with which to carry on negotiations; and that the Schomburgk line, originating in considerations of convenience and expediency, had been declared in 1886 the "irreducible boundary" of British Guiana only because Venezuela insisted that arbitration should be applied to a great tract that had long been settled by British subjects. While regretting that Venezuela should have severed diplomatic relations, and repudiating any design to seize her territory or "forcibly to extend sovereignty over any portion of her population," Lord Salisbury declared that Great Britain could not submit to arbitration claims "involving the transfer of large numbers of British subjects . . . to a nation of different race and language, whose political system is subject to frequent disturbance, and whose institutions as yet too often afford very inadequate protection to life and property." He was ready still to submit to arbitration the territory beyond the Schomburgk line. President Cleveland's message to Congress briefly reasserted the arguments for the right to intervene in the matter, and expressed disappointment and regret that the British government refused to accept the proposition for impartial arbitration. Under the circumstances, he said, the situation must be dealt with as it stood. Venezuela might settle the boundary with Great Britain by any means she deemed best; but in the absence of some settlement the United States must determine for its own justification what was the true divisional line in the disputed territory. He recommended, therefore, that Congress appropriate money for a commission, to be appointed by the executive, who should carefully and judicially investigate the facts of the case, and report as soon as practicable. And the

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message continued: "When such report is made and accepted, it will, in my opinion, be the duty of the United States to resist by every means in its power, as a wilful aggression upon its rights and interests, the appropriation by Great Britain of any lands or the exercise of governmental jurisdiction over any territory which, after investigation, we have determined of right belong to Venezuela. In making these recommendations I am fully alive to the responsibility incurred, and keenly realize all the consequences that may follow." The belligerent tone of the message in this concluding passage caused great surprise and much excitement both in the United States and in Great Britain. Congress responded very promptly to the president's recommendation. A bill appropriating $100,000 for the expenses of a commission was passed by the House of Representatives unanimously and without debate December 18, and by the Senate, also unanimously, but with a brief discussion, on the 20th. On the first of January the president announced the five members of the commission as follows: David J. Brewer, of Kansas, associate justice of the Supreme Court of the United States; Richard H. Alvey, of Maryland, chief justice of the Court of Appeals of the District of Columbia; Andrew D. White, of Ithaca, N.Y.; Frederic R. Coudert, of New York City; and Daniel C. Gilman, of Maryland, president of the Johns Hopkins University. The commission met on the 4th and organized with Justice Brewer as president. It has since been constantly at work upon its task of ascertaining "the true divisional line" between Venezuela and British Guiana. On the 15th of January the commission, through Justice Brewer, addressed a note to Secretary Olney setting forth the peaceful and non-international character of the body, and the desirability of securing the coöperation of Great Britain and Venezuela, as *amici curiae*, in the procuring of evidence bearing on their respective claims. Both governments complied with the suggestion, as conveyed to them by the Department of State, and each furnished to our government in March an elaborate statement of its case. The consent of Venezuela had been expected, but there had been doubt as to whether any assistance whatever would be accorded by Great Britain to the commission in its deliberations. At the end of this RECORD the work of the commission was proceeding slowly, but with an appearance of exceeding thoroughness. Meanwhile it was announced in Parliament on March 16 that the United States had opened further negotiations with Great Britain on the Venezuelan difficulty, and later the official statement was made that a proposition for a general treaty for the arbitration of disputes was also under consideration. — Incidentally to the excitement following the president's message of December 17, a large number of state governors and legislatures put themselves on record as approving the Monroe Doctrine and its interpretation by the administration. Later in the winter a strong demand for a general arbitration agreement between Great Britain and the United States was agitated by influential men in both countries. A large convention to this end was held in London

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March 3, and another in Washington April 22, to both of which letters from leading members of the respective governments were sent expressing sympathy with the purpose of the meetings. — The enforcement of the neutrality laws in connection with the **Cuban insurrection** has furnished uninterrupted occupation to our revenue officials. In accordance with a judicial decision the secretary of the treasury on March 19 advised his subordinates that not arms alone, but arms and men together, must be found on board in order to give ground for seizing a vessel. After the attacks on American consulates by rioters at Barcelona and elsewhere, when the news of Congress's threatened intervention in Cuba reached Spain (see below, p. 392), the Spanish government very promptly expressed regret, and promised suitable reparation. Upon the summary sentence to death, May 9, of two American citizens captured on the schooner *Competitor*, which was conveying arms to the Cubans, our government at once demanded a suspension of execution, on the ground that under treaties the prisoners were entitled to a civil trial. The suspension was granted, pending discussion as to the construction of the treaties. — In the **Bering Sea question**, a treaty for the settlement by a joint commission of the claims of Canadian sealers against the United States was negotiated in November, and ratified by the Senate April 15. The regulations established by the Paris Tribunal have proved so inadequate for preventing the slaughter of the seals that, in the opinion of the secretary of the treasury, Congress ought, unless some improvement be made, to authorize by law the killing of all the seals at the Privylov Islands, and thus terminate the whole sealing industry by the extinction of the herds. Projects to this end were considered by the Senate committee on foreign relations in February. — The Department of State, and particularly the minister of the United States at Constantinople, have been under great pressure to insure protection to missionaries and other American citizens in Asia Minor during the massacres of the Armenians. No deaths of American citizens have been reported, but considerable property belonging to missionaries was destroyed by the mob at Harput, and claims for indemnity have been made and pressed.

INTERNAL ADMINISTRATION. — By proclamation dated January 4, 1896, President Cleveland declared that Utah had complied with all the conditions necessary to constitute her a state of the Union. Among the conditions prescribed and duly recited in the proclamation was the enactment by the convention of an ordinance, irrevocable without the consent of the United States, providing for full religious toleration and prohibiting plural marriages. — The secretary of the treasury, on January 17, confirmed the action of Comptroller Bowler in reference to the sugar-bounties (see last RECORD, p. 737), and finally referred the matter to the court of claims. But by another procedure the claimants succeeded in getting the case directly before the supreme court, where it was argued in the third week in April. — The movement for **civil-service reform**, which has been

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in progress for thirty years, practically attained its goal in May. After minor extensions of the classified service in March and April, President Cleveland issued, on May 6, the decisive order which brought into that service the 30,000 places to which the law might be, but had not yet been, applied. By this order, which went into effect at once, the method of appointment by competitive examination became applicable to substantially all employees in the government service between the grade of laborer at one extreme, and that of officers who under the Constitution must be confirmed by the Senate, at the other. The number of positions on the classified lists became 85,135, and the number of exceptions to the rule of appointment by examination was reduced to 775. Non-competitive examination was abolished except in a very limited number of cases. The new rules divide the executive civil service into five branches: The departmental service, the custom-house service, the post-office service, the government-printing service, and the internal-revenue service. In the departmental service are classified the officers and employees in the several executive departments, the commissions, the District of Columbia, the railway mail service, Indian service, pension agencies, steamboat inspection service, marine hospital service, lighthouse service, mints and assay offices, revenue cutter service, sub-treasuries and engineer departments, and the forces employed by custodians of public buildings. The only exception made in the Treasury Department is in favor of those in the life-saving service. In the custom-house service are classified all officers and employees in any customs district whose employees number as many as five. In the post-office service are classified all officers and employees in any free-delivery post-office. In the internal-revenue service are classified all officers and employees in every internal-revenue district, except, of course, mere laborers. In the Post-Office Department an obstacle to the extension of the reform through the consolidation of fourth-class offices with free-delivery offices (see last RECORD, p. 739) was found to exist in the form of the appropriations for the lesser offices. Postmaster-General Wilson strongly urged a change in the appropriation bill that should render the reform possible, but his suggestion was rejected by Congress, mainly on political grounds. The order of last September in reference to the method of appointment of consuls and commercial agents has been administered in such a manner as to win the commendation of the advocates of civil-service reform. From the promulgation of the order to the middle of March four places were filled by promotion, four by reinstatement after previous service, and four by candidates after an examination. — Gen. Theodore Runyon, Ambassador to Germany, died suddenly at Berlin, January 27. His place was filled by the appointment, February 10, of E. T. Uhl, of Michigan, the first assistant secretary of state.

THE FINANCES AND THE CURRENCY. — Heavy withdrawals of gold from the treasury in November indicated a return of the now familiar process through which the government is forced to take measures for the

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protection of the gold element in the currency. President Cleveland's Annual Message of December 3 embodied a lengthy discussion of the currency question. After reviewing the history of our currency for the last twenty years and defending the bond-syndicate contract of February, 1895, (see this RECORD for June, 1895, p. 366), he showed that the good effect of that operation had recently ceased and that the gold reserve now stood at $79,333,966, with a prospect of further decrease in the near future. He then declared his conviction that the only thorough remedy for the trouble lay in the retirement of the greenbacks and the treasury notes of 1890, by the issue of low-rate and long-term bonds. To offset the contraction thus produced in the currency, the national banks should be authorized to issue notes up to the par value of the bonds deposited as security, and possibly the treasury might be authorized to coin and slowly put into circulation the silver bullion left free by the retirement of the treasury notes of 1890. Mr. Cleveland then addressed himself to the contention that it was the deficit in the revenue, rather than the currency situation pure and simple, that was responsible for the recent repeated bond issues. This assertion he denied, showing that the receipts of the treasury were exclusively in silver certificates and notes or in greenbacks, while gold was the form of currency that was needed, and that any attempt to retain greenbacks while paying out silver and silver certificates would contravene the express mandate of the law requiring reissue; would discriminate in favor of silver and thus militate against the credit of the government; and would lead to all the evils heretofore experienced from the accumulation of a surplus in the treasury. He pointed out that at the time of each bond issue there had been in the treasury a safe surplus for ordinary operations, exclusive of the gold reserve, and declared that at no time had there been any consideration of paying the expenses of the government from the proceeds of bonds. His message concluded with a temperate argument against the free-coinage idea, and a plea for a single gold standard of value, with a silver element in the currency based upon this. Secretary Carlisle's report, presented to the House of Representatives December 16, embodied, in more extended form, the same arguments as the president's message. The estimates for the current fiscal year looked to a deficit of $17,000,000. The fact that the deficit of $42,805,223 for the year 1895 was double what had been estimated, was attributed by Mr. Carlisle to the supreme court's decision against the income tax. For 1897, on the basis of present laws, the secretary estimated that the deficit would disappear. On the first of December, he reported, there was a cash balance in the treasury of $98,072,420, exclusive of the gold reserve. — The difficulty which had been anticipated in keeping gold in the treasury became acute as a **result of the president's Venezuelan message** of December 17. The "war scare" which was caused by that document was attended by a panic on the London Exchange, which communicated itself to the Continental exchanges and produced at once serious consequences in New York. Prices fell

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heavily, some failures were reported, and the withdrawal of gold from the treasury assumed great proportions. On the 20th the reserve had gone down to $69,650,000, ten millions less than three weeks earlier, with further large reductions obviously near at hand. The president accordingly on that day sent to Congress a special message, stating the situation, alluding to the effect of his recently announced foreign policy, and declaring that the result conveyed a "warning that even the patriotic sentiment of our people is not an adequate substitute for a sound financial policy." He asked Congress to postpone its holiday recess until something had been done to reassure the apprehensive among the people, but declared that in any case he should use every means in the power of the executive to maintain the country's credit. The suggestion was acted upon, and on the 26th the House of Representatives took up two bills dealing respectively with the tariff and the currency. The fate of these bills is narrated elsewhere (see next page *et seq.*). **A new bond issue** had been regarded from the outset as inevitable, and there was much discussion in the press as to whether the administration would contract privately with a syndicate or open a public subscription. On January 6 a call was issued for bids for $100,000,000 coin four-per-cents, running thirty years. In a private letter under date of the 5th, made public on the 9th, the president denied in strong terms the newspaper allegations that his original purpose had been to dispose of the bonds privately to a syndicate of New York bankers, and this denial was confirmed by a statement of J. Pierpont Morgan, January 14, in which he said that he had organized a syndicate to take bonds if they should be issued, but not through any understanding with the administration. The bids for the issue announced were opened February 5. They numbered 4640 and amounted to $684,262,850. Awards were made to 781 bidders, of whom the Morgan syndicate received $33,179,250 at 110.6877, together with certain amounts awarded to bidders who failed to fulfill the conditions of the contract. The total gold received by the treasury was about $111,000,000, and the average rate of interest realized by subscribers was about $3\frac{3}{8}$ per cent. In the absence of such guarantees as were contained in the syndicate contract of a year previous, it was impossible to make certain that the gold to pay for the bonds should not be taken out of the treasury. There were abundant indications that many of the bidders procured their gold in this way. Gold and legal-tenders were at a premium in Wall Street during the period in which the various installments of the bids fell due, and despite the vigilance of the treasury officials, at least one instance came to light in which a purchaser, through a broker, drew gold for notes and paid it in for bonds without removing the metal from the sub-treasury. During January and February withdrawals were very heavy, and the reserve reached as low a point as $45,000,000 before the counteracting influence of the bond proceeds began to be felt. By February 20 the reserve had passed the hundred-million point. At the close of this RECORD it was about $117,000,000, with heavy exports pending.

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CONGRESS. — The first session of the Fifty-fourth Congress opened December 2. In the House of Representatives the **organization** was effected through the election of Mr. Reed, of Maine, as speaker, and the minor officers who had been agreed upon by the Republican caucus. The membership of the House at the opening of the session embraced 244 Republicans and 105 Democrats. Speaker Reed announced the committees on December 21. Of the most important committees the chairmen were as follows: Ways and Means, Dingley, of Maine; Appropriations, Cannon, of Illinois; Foreign Affairs, Hitt, of Illinois; Banking and Currency, Walker, of Massachusetts; Judiciary, Henderson, of Iowa; Commerce, Hepburn, of Iowa. In the rules of the House, as finally completed January 23, the much debated question of quorum-counting was settled by a provision that in case a quorum fails to vote the sergeant-at-arms shall bring absentees before the House, the clerk shall note them as present, and they shall be considered, even though they decline to vote, as constituting part of a quorum for the purposes of the pending question. In the Senate a reorganization of the committees was effected December 30 by the Republicans. The parties were represented in this body as follows: Republicans, 42; Democrats, 39; Populists, 6. The Populists refrained from voting on the reorganization, it being understood that they had been placated by the composition of the finance committee, which had a majority in favor of free coinage of silver. The chairmen of the more important committees, as reorganized, were as follows: Appropriations, Allison, of Iowa; Finance, Morrill, of Vermont; Foreign Relations, Sherman, of Ohio; Interstate Commerce, Cullom, of Illinois; Judiciary, Hoar, of Massachusetts. On the 7th of February Frye, of Maine, was elected president *pro tem.* of the Senate, in the place of Harris, of Tennessee. — **President Cleveland's Annual Message** was presented to the houses December 3. It was confined to two topics, foreign affairs and finance, giving about equal space to each. The financial part is summarized elsewhere (see p. 370). As to foreign relations, the message contained little of striking importance. The successful result of the efforts to get satisfaction for the outrages on missionaries in China was set forth; German state discriminations against American food products and American insurance companies were complained of, and the possibility of retaliatory measures suggested; the inadequacy of the regulations under the Bering Sea arbitration to insure the preservation of the seal herds was dwelt upon, and action looking to the settlement of Canadian claims against the United States that were validated by the Paris Tribunal was urgently recommended. As to other British relations, as well as those affecting our intercourse with Spain, the message contained little beyond what may be found elsewhere in this RECORD. — The prompt action of Congress in reference to the president's recommendation of a Venezuelan Boundary Commission has been described above (p. 367). The special message of December 20 (p. 371) prompted some **attempts at financial legislation.** On December 26 two bills were introduced in the

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House of Representatives by Chairman Dingley of the ways and means committee. Adopting the view maintained by the Republicans, that the chief cause of the difficulty in maintaining the gold reserve was the deficiency in the revenue, he proposed first a bill "to temporarily increase the revenues." This provided that until August 1, 1898, the customs duties on most varieties of wool and woolen goods and on lumber, should stand at sixty per cent of those imposed by the McKinley Act of 1890, and that the duties in all the other schedules of the tariff, except sugar, should, with slight exceptions, be increased by fifteen per cent over those of the existing law. This bill passed the House on the 27th by a party vote of 205 to 81. On the following day the second bill, "to maintain and protect the coin redemption fund," was passed by 170 to 136, — 47 Republicans in the minority. This bill authorized the secretary of the treasury to procure coin for redeeming legal-tenders by the sale of three-per-cent five-year bonds, and to provide for temporary deficiencies by the issue of three-year three-per-cent certificates of indebtedness in small denominations. The administration was as little satisfied with this bill as with that changing the tariff, and proceeded with the bond issue, as narrated above (p. 371). The failure of the bills in the Senate was foreseen, but the precise form in which it was manifested excited some surprise. On February 1 the bond bill was transformed by the adoption of a substitute providing for the free coinage of silver, and this was passed by a vote of 42 to 35. On the 14th the House refused, by 215 to 90, to concur in the Senate's amendment, and the whole subject was dropped. Meanwhile the Senate finance committee had reported a free-coinage substitute for the House tariff bill also. But after this further exhibition of their strength the silver senators refused to go further, and on February 25 joined with the Democrats in rejecting, by 33 to 22, a motion to take up the bill for consideration. This vote was recognized as finally disposing of the measure. — The impulse given to the so-called Jingo sentiment by Mr. Cleveland's Venezuelan boundary message led to protracted debates in both houses on various phases of **foreign policy**, though little definite action resulted. Many resolutions were introduced aiming to give legislative sanction to the Monroe Doctrine, but none came to a vote. The Senate committee on foreign relations reported favorably, on January 20, a concurrent resolution offered by Senator Davis, of Minnesota, reaffirming the principles of President Monroe's message of December 2, 1823, and declaring that the United States would regard as unfriendly to itself any "attempt by any European power to take or acquire any new territory on the American continents, or any islands adjacent thereto, or any right of sovereignty or dominion in the same, in any case or instance as to which the United States shall deem such attempt to be dangerous to its peace or safety, by or through force, purchase, cession, occupation, pledge, colonization, protectorate, or by control of the easement in canal or any other means of transit across the American isthmus." This resolution, while expressing very faithfully the extreme Jingo view as to what should be the attitude of

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the United States, was not pressed to a vote. Upon the subject of the outrages in Armenia positive action was taken by the adoption of a concurrent resolution by both houses, with slight opposition, January 27. The resolution recited certain provisions of the Treaty of Berlin of 1878, the object of which was alleged to be "to place the Christian subjects of the Porte under the protection of the other signatories" to the treaty; referred to the horrors of the late massacres; expressed an "earnest hope"-that the European concert might result in decisive measures to secure to unoffending Christians their rights; requested the president to communicate the resolutions to the governments of the signatory Christian powers; and finally declared that the houses would support the president in the most vigorous action for the protection of American citizens in Turkey. The progress of the insurrection in Cuba brought to the front in both houses of Congress a strong sentiment in favor of recognizing the insurgents as belligerents, even at the risk of a war with Spain. It was known, however, that the administration was adverse to such recognition; and as there was a feeling that the president's hand should not be forced in the practical conduct of our relations with Spain, the action taken by the houses was cast in the form of concurrent resolutions, which do not require the president's signature and have not the force of law. On February 28 the Senate passed, by 64 to 6, resolutions declaring that the United States should accord belligerent rights to the Cuban government, and that the president should offer friendly offices to the Spanish government for the recognition of the independence of Cuba. The House of Representatives, on March 2, adopted, by 263 to 17, resolutions of substantially the same purport, but with an additional declaration that, in view of the losses entailed upon the people of the United States by the existing war, "the government of the United States should be prepared to protect the legitimate interests of our citizens by intervention, if necessary." A conference committee appointed to adjust the difference between the two houses reported at first in favor of the House form. Strong opposition to this report developed, however, in the Senate, and ultimately a new conference was ordered, which reported, March 26, in favor of the less extreme Senate resolutions. On the 6th of April the House adopted the report by 245 to 27. — **The appropriation bills** were pressed ahead with unusual rapidity, five of them having become laws by the middle of March. This was in accordance with the announced policy of Speaker Reed and the other Republican leaders to have a short and economical session. In the Agricultural Appropriation Bill Congress once more took up the struggle with Secretary Morton over the free distribution of seeds (see last RECORD, p. 738); after appropriating $163,400 for the purchase of seeds, a joint resolution was passed making it mandatory upon the secretary to purchase and distribute them. The president let both the bill and resolution become law without his signature. The last of the general appropriation bills was brought before the House April 18. The grand total of the ap-

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propriations proposed in these bills, together with the permanent appropriations, was $505,019,410.88, which was changed only slightly by the amendments of the Senate. — Outside of the regular appropriations little **general legislation** was completed. In the midst of the "war scare" produced by Mr. Cleveland's Venezuelan boundary message, the Senate unanimously passed a bill repealing the prohibition of former Confederates from holding commissions in the army; and this was adopted by the House also, March 24, with but one dissenting vote. Prize-fighting in the Territories and in the District of Columbia was prohibited by act approved February 7 (*cf.* last RECORD, p. 742). — On the 20th of March the House passed, by 180 to 71, a resolution censuring Ambassador Bayard for certain expressions in public speeches which he had made in England. One of the passages censured referred to the people of the United States as "a strong, self-confident, and oftentimes violent people," who needed a strong man to govern them; and the other stated in severe terms the evils of a protective tariff, as illustrated in the United States. The matter had been brought before the House in December on a motion to impeach Mr. Bayard, but the milder form of action was recommended by the committee on foreign affairs.

THE FEDERAL JUDICIARY. — The supreme court has decided the following important cases: November 18, United States *vs.* The Union Pacific Railway and the Western Union Telegraph Company: Held, that under the acts of Congress relative to the bond-aided Pacific railroads, no railroad company operating one of the post-roads of the United States over which interstate commerce is carried on can grant to any one or more telegraph companies the exclusive right to use its roadway for telegraphic purposes. November 25, Mills *vs.* Green, involving the validity of the elections for the constitutional convention of South Carolina: Suit dismissed, on the ground that, since the convention had been for some time in session, it would be impossible to grant the relief sought. January 27, United States *vs.* Electric Railway: Held, that the purpose of preserving and marking, on the site of the battle of Gettysburg, the positions of the troops at the battle, is a public use or purpose, for which Congress may authorize condemnation of the necessary land. March 23, Brown *vs.* Walker: Held, that the act of 1893, compelling witnesses in interstate-commerce cases to answer even when they declare that they will incriminate themselves (see last RECORD, p. 741), is constitutional. March 30, several Interstate Commerce Cases: Held, that shipments on a through bill of lading between points in different states are subject to the operation of the Interstate Commerce Act, and that this applies to any road making up part of the through route, even though the road lies wholly in a single state; and held, that an order of the Interstate Commerce Commission requiring a company to charge the same rate from New Orleans to San Francisco on freight arriving from a foreign country as on freight originating at New Orleans, was unwarranted and void. April 13, Woodruff *vs.*

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Mississippi: Held, reversing state court, that state bonds "payable in gold" are good, even though the state law does not authorize payment in any particular kind of money, and must be paid in the coin agreed upon. — The vacancy on the bench of the supreme court, caused by the death of Justice Jackson, was filled by the appointment in December of Judge R. W. Peckham, of New York. — In the circuit courts, at New Orleans, December 18, the Sugar Bounty Act, which the comptroller of the treasury had refused to recognize as valid, was declared constitutional, and an appeal was taken to the supreme court; at Cheyenne, November 21, held, that the hunting rights of the Bannock Indians, as established by federal treaties, were secure against any provisions of the game laws of the states (see last RECORD, p. 738); at Cleveland, January 28, held, that the Ohio law which forbids certain corporations to require employees to waive right to damages for personal injuries, is unconstitutional, as depriving persons of liberty of contract, without due process of law.

ELECTIONS AND THE PRESIDENTIAL CANVASS. — The state election in Rhode Island, April 1, resulted in a Republican victory by about eleven thousand plurality over the Democrats. In Louisiana an election April 21 resulted, on the face of the returns, in a majority of twenty-three thousand for Foster, the Democratic candidate for governor. The campaign had been an unusually exciting one, owing to the combination of Populists, Republicans and protectionist Democrats against the long-dominant regular Democracy. The opposition claimed that the Democratic majority returned was fraudulent, having been made up chiefly in the "black belt," where the negroes were in fact prevented from voting. A constitutional amendment was submitted at this election for ratification, requiring as a qualification for the suffrage either the ability to read or write, or the ownership of $300 worth of property on which taxes are paid. — The presidential canvass was definitely opened by the action of the Republican and Democratic national committees in December and January, fixing the meetings of the nominating conventions respectively at St. Louis, June 16, and Chicago, July 7. In the various proceedings leading up to the choice of delegates by the state organizations especial interest was excited by the attitude taken on the silver question. This was important in view of active efforts of the silver factions in both parties, with threats of "bolting," to commit the parties to support of the free-coinage idea. Of the Republican state conventions the following have declared unqualifiedly against free coinage: Massachusetts, Connecticut, Rhode Island, Kentucky, New York, Indiana. Of the Democratic state conventions, the following have declared unqualifiedly in favor of free coinage: Oregon, Missouri, Alabama, Mississippi, Tennessee. In most of the other states the conventions have qualified their expressions on the subject so as not to make a clear-cut issue. But some Democratic conventions in the East have come out definitely against free coinage, while a number of Republican conventions in the West have declared as distinctly for it. — As to the candidates for

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nomination for the presidency, ex-Governor McKinley, of Ohio, Governor Morton, of New York, Speaker Reed, of Maine, Senator Quay, of Pennsylvania, and Senator Allison, of Iowa, have been put openly in the field on the Republican side, while ex-President Harrison has declined to permit the use of his name. On the Democratic side ex-Congressman Morrison, of Illinois, ex-Congressman Bland, of Missouri, and ex-Governor Russell, of Massachusetts, have been put in the field, while Secretary of State Carlisle has declined. — The National Advisory Board of the American Protective Association issued a circular April 12 urging members to make every effort to have elected as delegates to the Republican national convention men who were in sympathy with the purposes of the association, and denouncing the candidacy of McKinley on the ground that he was the choice of the Roman Catholic hierarchy, and in confidential relations with leading "papists." The other leading Republican candidates had previously been declared unexceptionable from the point of view of the A. P. A.

VARIOUS STATE LEGISLATION. — The constitutional convention of **South Carolina** finally completed its work December 4, and the new instrument, without submission to the people, went into effect with the new year. The more prominent features of the convention's work were mentioned in the last RECORD. In passing the acts necessary to carry out the constitutional provisions as to the suffrage, the legislature rejected all amendments designed to qualify the discretion conferred upon the registration officers in testing the applicant's ability to "explain" a clause of the constitution. — In New York a bill became law February 17, under which Prussian insurance companies were excluded from transacting business within the state. This action was in retaliation for alleged unjust treatment of several New York companies by the Prussian authorities. On January 21 the state court of appeals declared unconstitutional an act of the last legislature, exempting veterans of the Civil War from the competitive examinations required by the constitution in the filling of offices. This civil-service clause of the constitution as revised in 1894 was rigorously maintained by the court in another decision, also, in March, which held that the clause was self-executing and went into effect at once without action of the legislature. — The supreme court of Indiana, on January 30, declared unconstitutional the legislative apportionment act of 1895. As two preceding apportionments had also been set aside as invalid, that made as long ago as 1885 was thus brought again into force. In Wisconsin at the beginning of March a special session of the legislature resulted in an apportionment designed to replace one which had been declared unconstitutional by the state supreme court. The validity of the new act, however, was at once attacked, and the matter is before the courts again. — In respect to **the liquor question**, the feature of the period under review has been the Raines Liquor Tax Law, which was passed by the New York legislature in March, receiving the governor's signature on the 23d. This is a high-license

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act, with local option for towns, and it imposes severe restrictions on the traffic in other particulars. Sunday selling is absolutely prohibited, and the proximity of saloons to dwelling-houses, schools and churches is carefully regulated. But the most revolutionary feature of the act is the abolition of all local boards of excise and the creation of a corps of state officials to whom is entrusted the entire administration of the system, under the direction of a commissioner appointed by the governor. Of the net revenue derived from licenses, one-third goes to the state treasury and the remainder to the localities where it is collected. In South Carolina the authorities have succeeded in greatly decreasing the number of illicit saloons ("blind tigers") by the policy of lowering prices in the state dispensaries. In January this policy had been so successful that it was thought safe to advance prices again. Under the new constitution of the state the entire revenue from the dispensaries is devoted to the support of the schools. In Iowa another attempt to get the prohibitory amendment before the people again was defeated, February 27, by the failure of a resolution to that effect in the lower house of the legislature. — The policy of **the Mormons in Utah**, who constitute a majority in the first state legislature, has been watched with great interest and some suspicion. The legislature petitioned Congress to restore the church property which was confiscated some years ago, and passed a law legitimating the issue of polygamous marriages born prior to January 4, 1896. Bills for subsidizing silk culture and for restrictions on hours of labor in mines were criticised as designed to favor the forms of industry in which the Mormons were especially interested and to discourage all others. At a conference of the Mormon Church, April 7, a manifesto was issued declaring that officers of that church, before accepting political positions or nominations, must obtain the consent of the church authorities.

LABOR INTERESTS. — Both the Knights of Labor and the Federation of Labor, in their respective annual meetings of November 13 in Washington and December 10 in New York, manifested strong hostility to the financial policy of the national government, and a pessimistic feeling as to the future of the country under the dominance of the capitalistic influences which were alleged to control that policy. Mr. Sovereign was reëlected chief of the Knights of Labor. In the Federation a lively contest resulted in the return to power, by a small majority, of Mr. Gompers, who was defeated last year by Mr. McBride. The significance of this result seems to have consisted in a test of strength between the element favoring trades-unionism "pure and simple," represented by Mr. Gompers, and the element tending to a more socialistic and political policy, to which Mr. McBride was committed. — The only strike of great public significance during the period was that of the trolley-men in Philadelphia, December 17–25. All the surface roads were "tied up," and violence was common. The cause was a dispute as to the recognition of the employees' organization, and the settlement was reached by a compromise effected through the mediation of outsiders.

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LYNCH LAW. — The legislative period of the past winter was characterized by manifestations of a serious purpose on the part of the governments of several Southern states to grapple with the lynching evil. Upon the recommendation of the constitutional convention and of the governor, the legislature of South Carolina adopted a bill imposing severe penalties upon any officer permitting a person in his charge to be taken from him and lynched, and making the county in which a lynching takes place liable in exemplary damages to the legal representative of the victim, the county to recoup itself from the lynchers. Legislation for the same purpose was recommended by the governors of Virginia, Kentucky and Georgia, but was enacted only in the last-named state. This act was directed solely to cases in which outsiders interfered with the execution of a court's order after trial; it prescribed heavy penalties for such interference and required the officers interfered with, on pain of summary removal, to bring the offenders to justice. — A record of lynchings reported in the newspapers, which makes no pretense to completeness, shows the following results: Total number of victims, thirty-six, of whom twenty-one were negroes. The alleged offense was rape in fifteen cases, ten being rape of a white woman by a negro. Of the total number of instances, all but one occurred in states south of Mason and Dixon's Line, Maryland and West Virginia having one each. The single case in the North was the hanging of a white man in Illinois charged with rape of his sister-in-law. A case that attracted unusual attention was that in Colleton County, South Carolina, in which a negro, his wife and his mother were seized by a mob on the charge of being implicated in frequent robberies in the neighborhood, and were whipped by their accusers with such severity that the man and his mother died. The state authorities made a determined effort to convict the murderers, among whom were several men of good social standing, but the trial resulted, February 25, in an acquittal. In Tennessee and Alabama flagrant cases in which offenders were taken from custody and lynched gave rise to the offer of substantial rewards by the governors for evidence against the lynchers, but without result. In one instance in South Carolina a prompt call upon the militia by the sheriff frustrated an attack by a mob on the jail. — At Marion, Mississippi, November 12 was appointed as the day for the execution of the man who was rescued by vote of the spectators at the failure of the first attempt at lawful hanging two years ago (*cf.* this QUARTERLY, IX, 362). This time a mob broke open the jail on the night before the day set for execution and rescued the prisoner. — A serious state of affairs prevailed in St. Landry Parish, Louisiana, in the early part of April, due to a political faction fight among the whites. One faction sought to strengthen itself for the approaching election by encouraging the negroes to qualify themselves for voting by registration. The opposing faction took up arms to prevent the negroes from registering, and in the conflict several lives were lost, chiefly negroes. The state militia dispatched to the region seemed unable to restore order until the time for registration had passed.

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MUNICIPAL GOVERNMENT. — An attempt by the mayor of Baltimore to administer the city government on non-political lines met with a severe check through the action of the city council in March. The mayor and council are Republican, having been carried in by the tidal wave of the November elections. The mayor undertook, however, to follow non-partisan ideas in appointing subordinate officers, and this the council resented. The outcome was a series of measures passed by the council, March 9, over the mayor's veto, which deprived the mayor of the appointing power in case of all salaried offices of the city government. An appeal to the legislature to prevent this sweeping change in the character of the city government met with no favorable response. — In the West during the last year a movement has become very common among the smaller cities and towns for "curfew" ordinances, designed to keep children off the streets after a reasonable hour of the evening. Originating in Minnesota, such ordinances have been adopted by large numbers of towns in the states west of the Mississippi. Various attempts have been made to get similar laws passed in the larger cities, but thus far without much success. Omaha, however, adopted a curfew ordinance in March.

II. FOREIGN NATIONS.

INTERNATIONAL RELATIONS. — The Jameson raid into the Transvaal (see below, p. 382) gave rise to a brief but exceedingly violent ebullition of hostile feeling between **Great Britain and Germany.** Upon the telegraphic appeal of German residents in the Transvaal the German government took steps, just when affairs were most critical at Johannesburg, to send a detachment of marines from a cruiser at Delagoa Bay to the scene of disturbance, though the project was abandoned upon the news of Jameson's capture. A few days later, January 3, the emperor sent a dispatch congratulating President Krüger on his success in defeating the armed invaders. British public sentiment took great offense at both these incidents. They were regarded as trenching on the supposed suzerain rights of Great Britain over the Transvaal, and as embodying a deliberate insult to a friendly power. The press teemed with denunciations and defiance of Germany, which were repaid in kind by the German press, the long-standing feud between the colonial interests of the two nations in South Africa contributing much to nourish the controversy. The sympathy of the other Continental powers seemed to be largely with Germany; and Great Britain, being in the midst of her embroilment with the United States over the Venezuelan boundary question, stood apparently in complete and perilous isolation. That even the government felt the situation appeared to be indicated by the ostentatious mobilization of a powerful naval squadron in the channel on January 14. But when the unauthorized character of the Jameson raid had been established, and official explanations of Germany's actions had been made, the hostile manifestations died away, and soon the two governments

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were on terms of normal harmony. — This harmony was most impressively manifested as one of the **consequences of Italy's defeat in Abyssinia.** The disaster at Adowa, involving serious political and financial complications in Italy, was at once followed by expressions of sympathy and concern on the part of the other members of the Triple Alliance. The Austro-Hungarian foreign minister consulted with the German government at Berlin. At the same time it was reported, March 16, that the Czar had conferred a high military decoration upon King Menelik, and various incidents indicated the sentiment of France that Italy had only received what she deserved. Upon the indications that Italy would feel constrained to abandon Kassala, communications were entered upon between Great Britain and the government of King Humbert, which resulted in an understanding that Kassala should be held, while the attention of the Mahdists should be diverted by the Dongola expedition (*infra*, p. 394). The relations thus established between Italy and Great Britain naturally relaxed the tension between the latter and Germany, and led to rumors that the Triple Alliance had become quadruple. The harmony of the four powers as against France and Russia was clearly illustrated in the proceedings of the Egyptian Public Debt Commission. That body, being called upon to sanction the application of reserve funds to the purposes of the Dongola expedition, gave its approval March 26, against the protests of the French and Russian representatives. An appeal was made to the Mixed Tribunal by French bondholders against this decision. In April, the German Emperor visited King Humbert at Venice and Emperor Francis Joseph at Vienna. Conferences between the monarchs and their ministers were reported to have dealt with the renewal of the Triple Alliance at the expiration of its present term. — An important step towards settling controverted questions of colonial boundaries between Great Britain and France was taken in the convention signed January 15, in which the delimitation of actual possessions and of spheres of influence in Siam was definitely decided, and negotiations were provided for in respect to similar results in Tunis and the Niger country. The Siamese adjustment confirmed to France considerable extensions of territory beyond what she had secured through the affair of 1893 (see this QUARTERLY, VIII, 787).

THE TRANSVAAL AND GREAT BRITAIN. — The long-standing antithesis between Dutch conservatism and British progressiveness in South Africa has been illustrated by some of the most sensational incidents of the period under review. Within the last ten years the discovery of important gold deposits within the Transvaal Republic has attracted a large foreign population, chiefly British. Johannesburg, a large town of a general type familiar in our western mining states, is the center of this population and its interests, and the mining district in the vicinity is known as the Witwaters Rand. For some time the people of the Rand have complained that the Transvaal government, either through deliberation or through incapacity, failed to give them and their interests anything like the consideration to

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which their numbers and their contributions to the wealth of the state entitled them; and any hope of aiding themselves was excluded, they pointed out, through the existing laws, which were so framed as to insure the control of the government to the ultra-conservative Boers. Last autumn the tension between the foreigners (*uitlanders*) and the government became very great, and preparations were secretly begun by the more extreme elements among the former for an armed uprising. The demands of the *uitlanders* included extensive reforms in administrative organization and methods, so as to adapt them to the needs of an industrial community, the extension to the foreigners of equal civil rights with the native population, equality of the English with the Dutch language in the schools and in official use, and some degree of representation for the *uitlanders* in the government. Apparently in accordance with a preconcerted plan, a considerable force of the British South Africa Company's armed police, under Dr. Jameson, its chief officer, was concentrated during December at Mafeking, near the western frontier of the Transvaal Republic. On December 28 a number of prominent residents of Johannesburg sent to Jameson a letter, representing that the lives and property of the *uitlanders* were in danger from the Boers, and calling upon him to come to their aid. Jameson promptly set out with some 800 volunteers and six cannon for Johannesburg. Orders to return to British soil were promptly sent from London and Cape Town, but were disregarded. Meanwhile President Krüger had called the Boers to arms, and partly by threats and partly by promises of concessions, succeeded in preventing any outbreak at Johannesburg. A strong force dispatched to meet Jameson came upon him at Krügersdorp, not far from Johannesburg, and after a sharp fight forced him to surrender, January 2. Both the British government and the British South Africa Company promptly disavowed all knowledge of, or responsibility for, Jameson's proceedings; but the Boers were very distrustful of the good faith in this disavowal, especially since Jameson had been in confidential relations with Cecil Rhodes, the premier of the Cape Colony and head of the South Africa Company, and a brother of Rhodes was one of the signers of the letter which summoned Jameson to make his raid. A number of highly connected British officers, moreover, accompanied Jameson, and it was known that British domination in the Transvaal had long been a familiar item of policy in British colonial circles. The Transvaal government, after holding their prisoners a few days, delivered them over to the British authorities for punishment. At the same time, January 7, the revolutionary elements at Johannesburg were forced to surrender the arms and other supplies that they had collected, and to put themselves at the mercy of the Boer government. Several of the ringleaders, including one American, were arrested on the charge of treason, and a large number of others who were implicated were held on lesser charges. All these incidents had been attended by manifestations of active interest on the part of the British government, and a correspondence was entered upon by Mr. Chamberlain, colonial secretary, with President Krüger, as to the steps desirable for

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the maintenance of order in the Rand. Mr. Chamberlain suggested the concession of some measure of local autonomy to the region, and invited President Krüger to visit England in order to discuss freely the whole situation. The latter distinctly rejected any right of Great Britain to interfere in the internal affairs of the Transvaal, and demanded, as a basis for all negotiation, that Great Britain should renounce the supervision of foreign relations which had been conceded to her by treaty in 1884. A reply to the invitation to England was not given by President Krüger till April 25, and then it took the form of a request that the invitation might not be pressed. Thereupon the invitation was withdrawn. — Jameson and the officers who accompanied him were arraigned in London, February 25, on the charge of violating the Foreign Enlistment Act, but their trial has not yet taken place. The accused were received with many demonstrations of popular sympathy, which the authorities, however, endeavored to suppress. Mr. Cecil Rhodes, immediately after the Jameson raid, resigned his office as prime minister of Cape Colony. He later visited England, and apparently convinced the government that he was innocent of complicity in Jameson's transaction. A curtailment of the South Africa Company's power was effected, however, by an order putting the whole control of the police and military affairs of the company's territory in the hands of government officials. The *uitlanders* arrested at Johannesburg were brought to trial at Pretoria in April, and on the 27th four of them pleaded guilty to the charge of high treason, and fifty-nine others to lesser charges. The four were sentenced next day to be hanged, and the others to fines, imprisonment and banishment. The death sentences were, however, at once "taken off," and the precise punishment left undecided. At the trial the Transvaal government put in evidence certain captured cipher dispatches between Johannesburg, Cape Town and Mafeking, which indicated that Cecil Rhodes and other officials of the South Africa Company were actively concerned in the preparations for Jameson's raid.

TURKEY AND ARMENIA. — The crisis that existed in the Ottoman Empire at the end of the last RECORD, continued acute through the first half of the winter. **The harrying of the Armenians** was reported from all parts of eastern Anatolia. The slain were numbered by thousands, and in large districts the survivors were left in pitiful destitution by systematic pillage and devastation. By midwinter the disturbances had dwindled to occasional acts of isolated outrage, and order was in a measure restored, save at the mountain fastness of Zeitun, where a desperate band of Armenians maintained themselves against a besieging Turkish force until February 18, surrendering at last only through the mediation of foreign consuls. An unceasing pressure was kept upon the Sultan by the great powers to insure the promotion of the reforms and the restoration of order in Armenia; but the effect of this pressure was greatly lessened by the fact, well known to the Porte, that Russia had declined either to take part in any joint application of force to the Sultan, or to sanction the use of force by any single power. When the outrages upon the Armenians were renewed with such vehemence

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at the end of October, Russia did manifest for a time an inclination to strong measures, but later, supported by Austria-Hungary, she recurred to her former position. Lord Salisbury, in an address at London, January 31, declared that the only effective method of terminating the Armenian troubles would be a military occupation of the disturbed region; that the other powers were unwilling to carry this out; and that Great Britain was unable to do it alone, as well as unwilling to bring about the general European war which would result from the undertaking. In the consciousness that force would not be used, the Sultan was successful in resisting the moral pressure that was brought to bear in connection with various incidents that arose. He manifested personally much earnestness in striving to restore order and good government in the disturbed regions; but the repeated manifestations of activity among the revolutionary agitators at Constantinople made him extremely sensitive to the loss of prestige that would attend any appearance of submission to foreign dictation. Thus the demand of the powers that each should be permitted to send an additional gunboat through the Dardanelles to Constantinople for protection to foreigners in case of rioting, was only granted, December 10, after several weeks of animated negotiations. The paramount influence of Russia with the Porte was manifested at this time, and later there were rumors, officially denied, however, of a formal alliance between the two governments. — As the winter came on, the peril of the people in the devastated regions from exposure and starvation was made the basis of urgent appeals for assistance, sent forth by missionaries and other residents. Great Britain and America took up, through private organizations, the work of raising and forwarding supplies, and large provision was made. But here again obstacles were raised by the Ottoman government. The Sultan declared that he himself was able and willing to relieve the affliction of any of his subjects. An official Turkish relief commission was organized; and it was only after a good deal of friction that foreign contributions were allowed to be distributed through any other than this agency. The distribution of money raised abroad was unconditionally prohibited. Of the American missionaries, the Porte manifested constant suspicion. They were charged with encouraging the revolutionists among the Armenians.

GREAT BRITAIN AND IRELAND. — British political thought and interest prior to the assembling of Parliament were concentrated almost exclusively on the foreign relations of the empire. In a considerable degree the Armenian question, and in a very intense degree the Venezuelan and the Transvaal incidents, roused public spirit to a demonstrative pitch. The development and outcome of these incidents are treated above. — **Parliament** met February 11. The Queen's Speech dealt largely with the foreign relations. As to internal affairs, it declared the condition of agriculture to be "disastrous beyond recent experience," and promised measures for the relief of the classes affected. Other projects foreshadowed were a modification of the elementary school system, an Employers' Liability Bill and an Irish

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Land Bill. In the debates as the session progressed, the ministry's position on foreign questions was developed thus: As to the Venezuelan boundary, the interest of the United States in the matter was admitted; and without any concession that the British claim or policy was wrong, the expectation of a peaceful solution of the problem was asserted. In reference to Armenia, the government admitted that its readiness to force the Porte to act more vigorously in suppressing the disorders and inaugurating the reforms had been nullified by the refusal of the other powers to use more than moral suasion; but Lord Salisbury felicitated himself upon having at least avoided a general European war. As to the Transvaal, the purpose was announced of maintaining against all the world the suzerainty of Great Britain over the Transvaal Republic to the full extent recognized in the treaty of 1884. The naval demonstration which had been made in January (see above, p. 380) was supplemented by the announcement, March 2, of the naval program and policy of the government. Mr. Goschen's estimates for the navy included proposals for a very large increase in ships, in men and in various forms of naval works, such as docks and machine shops. The money demanded reached a total of £55,000,000, distributed over a series of years. In March the government's announcement that the Dongola expedition against the Mahdists had been decided upon was made the basis of a motion of censure by Mr. Morley, which was defeated, March 20, by 288 to 145.— The government's leading measures were introduced as follows: March 31, by Sir John Gorst, the Education Bill, extending the facilities for secondary education, and putting the elementary school system under administrative charge of committees appointed by the county councils, with powers so adjusted as to favor the voluntary schools and to encourage religious instruction in the board schools; April 13, by Mr. Gerald Balfour, the Irish Land Bill, amending and supplementing the former land-purchase acts in various points, and facilitating purchase by making the terms easier for the purchaser; April 20, by Mr. Chaplin, the Agricultural Rating Bill, relieving agricultural land of local taxation on half its assessed value, the deficiency to be made good by the royal exchequer. The budget was presented by Sir Michael Hicks-Beach, April 16. The past year, he announced, showed the largest surplus the treasury had ever known — £4,210,000, which was to be allotted chiefly to naval expenditures. For the ensuing year a surplus of £1,708,000 was estimated, which was to be applied to the proposed reduction of agricultural rating, and to an increase of education grants. The Agricultural Rating Bill passed its second reading April 30, by a majority of 177. — The dissensions among the Irish Nationalists have assumed an even more disastrous form than heretofore. On November 14 the Parliamentary committee of the Nationalist Party expelled Mr. Healy and his nearest friend from the committee. Later, Mr. Justin McCarthy gave up the effort to rule the distracted body, and resigned the chairmanship of the committee. After a vain effort to heal differences by the choice of Mr. Sexton to succeed McCarthy, Mr. John Dillon

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was finally chosen. As Dillon was the chief of the faction opposed by Healy, this outcome practically adds a third to the two parties into which the Nationalists were divided at the fall of Parnell. The more extreme Parnellites, and indeed some members of the other factions, publicly expressed great satisfaction at the embarrassments which seemed to threaten Great Britain in connection with the Venezuelan, and especially with the Transvaal episode.

THE BRITISH COLONIES AND INDIA.— Great Britain's apparently embarrassing position in her foreign relations at the beginning of the new year drew from the governments of nearly all her colonies patriotic assurances of loyal support in defending the integrity of the empire, and of sympathy with the home government's resolution to resent foreign interference in matters of colonial concern. A joint message to that effect came from the Australian Colonies and Tasmania, January 10; Natal and the Cape Colony expressed similar views, and the Canadian government broached a scheme of strengthening her defenses, while the Dominion Parliament adopted a resolution asserting unalterable loyalty to the throne, at the same time expressing a desire for friendly relations with the United States. — **The Manitoba school question** has continued to hold the chief place in Canadian politics. After refusing to come to terms with the Dominion government, the Manitoba premier, Greenaway, dissolved his legislature and appealed to the people. The elections, January 15, resulted in an overwhelming triumph for the ministry. Meanwhile the Dominion Parliament assembled January 2. After a cabinet crisis, due to dissatisfaction with the leadership of Sir Mackenzie Bowell, had failed to cause his retirement, the Remedial Bill, dealing with the Manitoba question, was introduced February 11. It provided for the establishment of separate schools for Catholics, but with stringent regulations to secure in them a standard of efficiency equal to that of the other schools. The maintenance of the separate schools was to be secured by the diversion of the school taxes paid by citizens who should elect to have their contributions so applied. As the provincial government had steadfastly refused to recognize any but the public schools, administrative machinery under Dominion auspices was provided for to carry out the act. The debates on this project in the House of Commons were bitter and protracted. The bill passed its second reading March 20, by 112 to 94. In committee, however, the opposition resorted to all available methods of obstruction, and finally, after a continuous session of six days, the government, April 15, announced the withdrawal of the bill. On the 23d, Parliament, having reached about the end of its term, was prorogued, and immediately afterward it was dissolved and elections were ordered. Meanwhile another attempt at compromise with the Manitoba government on the basis of mutual concessions had failed. On the 27th of April the prime minister, Sir Mackenzie Bowell, resigned his office. Shortly after a reorganization of the cabinet was effected by Sir Charles Tupper, who assumed the post of premier. — The project

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for **Australian federation** has made an important advance toward realization. In accordance with the method agreed upon more than a year ago (see this RECORD for June, 1895, p. 378), an identical bill providing for the election of delegates to a convention was enacted into law during the winter by the legislatures of New South Wales, Victoria, South Australia and Tasmania. The next step will be the drafting of a constitution by a convention consisting of ten delegates from each colony. The tendency to consultation for action in common concerns was illustrated by a conference of premiers held at Sydney, March 4, at which projects were considered bearing upon federal defense, immigration restriction, and quarantine and light-house regulation. — The financial reform in New South Wales, which had brought the two houses of the legislature to a deadlock at the end of the last RECORD, was adjusted by a compromise, under which the limit of exemption from both land-tax and income-tax was materially reduced from the figure originally proposed. — The question of duties on cotton in India was again taken up by the Legislative Council in the winter, and on February 3 the duty on woven cottons was reduced from five to three and one-half per cent, with other changes, also in the interest of the Lancashire mills. The discussion of the measure revealed again the opposition between the official and the non-official members of the council (*cf.* this RECORD for June, 1895, p. 378).

FRANCE. — Much interest was excited by the success of the Radical Bourgeois ministry in maintaining itself in power through the winter, though the Radicals were in a minority in both Chamber of Deputies and Senate. **The budget** for 1896, in the shape in which it had been framed by the Ribot cabinet, was passed in December, in time to be applied at the beginning of the fiscal year. This punctuality, unusual in recent times, won credit for the ministry. A new Succession Tax Law, in which the duties on certain inheritances reached as high as twenty per cent, was a feature of the revenue system adopted. On February 1, the budget for 1897, a distinctively Radical project, was presented to the Chamber. The provision on which the ministry staked its existence was that of a progressive income tax, to supplant the door-and-window tax. Under the new project, incomes of over 2500 francs were to be taxed on the excess at rates varying from one to five per cent, with reductions proportioned to the number of children in the family. The highest rate applied to incomes above 50,000 francs. Strong opposition to the project was manifested in the Chamber, and the election of the budget committee resulted in the choice of a large majority hostile to the measure. But a hot struggle in the Chamber ended, March 26, in a vote accepting the principle of the general income tax, by 286 to 270, reserving all questions as to methods of applying it. Besides the income tax, the proposed budget embodied considerable reductions in expenses, with application of the savings partly to debt redemption and partly to subsidies to societies for the relief of the sick and aged and of children. — Pending the progress of its financial policy the ministry became involved in a constitu-

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tional conflict with the Senate, which at last resulted in the **fall of the cabinet.** On the 11th of February an interpellation in reference to the action of M. Ricard, minister of justice, in supplanting the officer engaged in investigating a railroad scandal, resulted in a vote of censure on the minister and on the cabinet, who assumed responsibility for his act. M. Bourgeois carried the matter to the Chamber of Deputies, where, on the 13th he received a vote of confidence on the same issue. Relying on the action of the Chamber he declined to resign, even when the Senate again censured the ministry. On the 20th the Chamber again sustained the ministry by several votes, the least favorable standing 279 to 234. The Senate, on the following day, gave way, adopting by 184 to 60 a declaration that, though the ministry's refusal to recognize responsibility to the Senate was unconstitutional, the latter would not carry the matter to extremes that would endanger the public peace, but would leave the country to judge upon the case. On the 3d of April the Senate once more took up the fight, by voting no confidence in the ministry in connection with its foreign policy. Here the Chamber had previously voted confidence, and the ministry refused to resign. On the 21st the dispute was brought to a head by a vote of the Senate, refusing to consider certain Madagascar appropriation bills until a new ministry should be formed. Thereupon M. Bourgeois summoned the Chamber of Deputies, which was in recess, and announced to it on the 23d the resignation of the cabinet, protesting that he did not concede the Senate's right to take the position it had taken, but considered the maintenance of the national dignity in Madagascar paramount to all other questions. The Chamber promptly adopted a resolution reaffirming the preponderance of the representatives elected by universal suffrage. A cabinet of moderates formed by M. Méline assumed office on the 30th, with a program calling for harmony between the two houses of the legislature, and deprecating useless and irritating discussions.

GERMANY. — The late autumn and early winter were characterized by unusual activity on the part of the imperial authorities in prosecutions for *Majestäts-beleidigung*. Many newspaper editors and Socialist public speakers were convicted and imprisoned. Among the latter was Herr Liebknecht, the Socialist party leader. In the middle of November a prosecution was instituted against Professor Delbrück, the well-known historian, for an article in the *Preussische Jahrbücher* which was alleged to cast discredit on the authorities. Even the Conservative press joined in the protest against the government's course in this case, and the proceedings were discontinued before bringing the professor to trial. At the end of November the Berlin police made a concerted raid on the houses and haunts of conspicuous Socialists and seized a large quantity of papers, whereupon the leaders transported the party's funds and other property to Zürich, for security against other governmental searches. Shortly afterwards a number of committees engaged in conducting the business of the party were dissolved by the government as dangerous associations. These aggressive measures were generally attributed to Herr von Köller, the Prussian minister of the

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interior, and were said to be distasteful, in their manner at least, to his colleagues. These reports seemed to be confirmed by the retirement of the minister in the second week of December, and the appointment of Count von der Reck as his successor. — **The Reichstag** assembled for its winter session December 3. Chief among the measures announced by the government was the submission of the Imperial Civil Code, which has been in process of formulation for over twenty years. Other projects dealt chiefly with fiscal and economic questions, — *e.g.*, reform of the sugar-tax, regulation of the bourses, repression of dishonest competition in trade, *etc.* The draft of the Civil Code was introduced January 17, and in February, after some discussion, was referred to a committee. Its progress there revealed a serious resistance to the draft in connection with the civil marriage provision. The Conservatives, supported by the Centrists, sought to make the civil marriage optional rather than compulsory. Their proposition was rejected, however, by the committee at the end of April. In the Bourse Bill, as it passed its second reading May 1, a provision forbidding dealings in "futures" in grain was inserted by a vote of 200 to 39. The success of the Agrarians in this matter was balanced by the rejection in January of their favorite Kanitz Bill for the government monopoly of grain importation, the vote standing 219 to 97. The death of a prominent noble in a duel led to an animated discussion of the practice of duelling, and to the unanimous adoption, April 21, of a resolution requesting the government to use all means at its disposal to combat the practice. The chancellor's statement in regard to this matter conceded the desirability of a stricter enforcement of the laws against duelling, but declared that "those who are determined to fight will always find ways and means to carry out their purpose." The Radicals and Socialists claimed that such concessions really encouraged the illegal practice, and that it could never be extirpated so long as the military code required officers to accept challenges, and notorious duellists were received with favor in imperial court circles. On the 8th of February Chancellor von Hohenlohe announced that the Bundesrath had declined to approve the proposal of the Reichstag in its last session, looking to a monetary conference under German auspices for the rehabilitation of silver. — In the Prussian Landtag, which assembled January 15, the chief interest has been in projects for improvements in the organization and salaries of the lower schools, and for the benefit of agricultural industries. The Saxon Landtag reformed the electoral system of Saxony by substituting for direct universal suffrage a class system of indirect election on the Prussian model. Three classes of electors were created according to income, the first including those having 10,000 marks, the second, from 2800 to 10,000, and the third all other tax-payers. Each class is to elect one-third of the electors who choose members of the Landtag. It was admitted that the purpose of the law was to exclude the Socialists from power.

AUSTRIA-HUNGARY. — The Badeni government's **Electoral Reform Bill** was introduced in the Reichsrath February 15. It provides for the

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addition of 72 new seats to the lower house of the Reichsrath, making the total number 425. The new seats are to be filled practically through impartial manhood suffrage, all male citizens 24 years of age and with a six-months' residence in the district being entitled to vote, though in some cases not directly for the member. The other members of the legislature are chosen by the four *curiae* as before (*cf.* this RECORD for June, 1894, p. 370). Of the new seats, eighteen are assigned to Bohemia, fifteen to Galicia, and various smaller numbers to each of the other provinces of the empire. It is calculated that the Socialists will secure about a dozen seats under the new system. The bill was taken up for discussion in the middle of April and, meeting with little opposition, passed its third reading, May 7, by 234 to 19. — The preliminary ministerial negotiations in respect to the renewal of the compact of union between Austria and Hungary have been carried on quietly since the first of January. In February the two legislatures appointed committees to deal with the question of the respective quotas of contribution to the common expenses. The first proposition of Austria was that Hungary's portion should be forty per cent, while Hungary offered but thirty-three. A compromise at about thirty-five seems probable. The Radicals in both countries claim to favor a total separation of the two by refusing to renew the compact. — The conflict between **the government and the Anti-Semites** in Vienna has continued throughout the period under review. Dr. Lueger, after his election as burgomaster was vetoed by the emperor, as noted in the last RECORD, was again elected by the municipal council by 92 out of 137 votes. Thereupon the council was once more dissolved, November 13, and the city government put in the hands of an imperial commissioner. Attacks on the government's policy by Anti-Semites and Conservatives in the Reichsrath were easily defeated. At the end of February elections were again held for the municipal council, and they resulted, as before, in a large Anti-Semitic majority. On the 18th of April Dr. Lueger was once more chosen burgomaster, by 96 to 42. This time, after a personal interview with the emperor, he consented to decline the position and to accept that of vice-burgomaster, while some less conspicuous member of his party should be chosen to the first place. This arrangement was regarded as a surrender by the government, and it produced a profound sensation in Hungary, whose people and government were the objects of bitter attacks by Lueger. — The Hungarians began on May 2 an elaborate celebration of the millennium of their national life.

ITALY. — The Crispi cabinet met the Parliament on November 21 under very favorable auspices. The revenues promised an equilibrium in the budget; general quiet prevailed at home; and negotiations which were in progress with the Ras Makonen, seemed to promise the speedy accomplishment of the ministry's purpose to annex the Abyssinian province of Tigre. All these fair prospects were blighted, however, by the series of reverses in Africa that began in December (see below, p. 394). The finances were disordered by the additional military appropriations required for Africa;

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and popular tumults, stimulated by the Radicals and Socialists, attended the dispatch of reinforcements and broke up the internal quiet. Upon intelligence of the great disaster of March 1 at Adowa, rioting and demonstrations against the government became general in the larger cities and towns, and on the 5th the Crispi cabinet resigned. Three days later a ministry, under the presidency of the Marquis di Rudini, was announced. The new prime minister presented his program on the 17th. It involved a prosecution of the war until honorable terms of peace could be secured, but renounced the policy of expansion in Africa, and declared that neither the conquest of Tigre nor the maintenance of a full protectorate over Abyssinia would be insisted upon. The financial statement to the Chamber on May 5 was optimistic in tone. A deficit for the current year of a million lire was announced, which it was said could be easily met, without new taxes. — In Sicily the military rule that had prevailed for two years was withdrawn by decree of December 29. On the 6th of April the general administration of the island was committed to a royal commissioner, with headquarters at Palermo, and with powers of a far-reaching character over the ordinary officers of local government.

SPAIN AND CUBA. — Home conditions in Spanish politics have presented few points of especial interest. A revelation of grave corruption in the municipal administration of Madrid, in December, caused a passing sensation and resulted in the disgrace of some personages of high social standing. The Conservative Canovas ministry, with the consent of the Liberal majority in the legislature, carried on the government, awaiting a propitious moment for appealing to the electors. On February 26, the governor-general having given assurance that elections in Cuba would be possible, the Cortes was dissolved. The elections, held April 12, resulted, as is usual, in an overwhelming victory for the government. In Cuba and Puerto Rico, however, the Autonomist and Reformist Parties abstained from voting. The Republican Party in the home country, scenting advantage to its projects in the critical conditions of the times, healed up the factional differences that had divided it, but at the same time refrained from going to the polls. — It was the progress of **the Cuban insurrection** that constituted the central feature in the politics of the period. The aggressive campaign which Martinez Campos had prepared at the end of the last RECORD was anticipated and thwarted by the insurgents. The latter, under Gomez and Maceo, took the offensive themselves, and, moving westward, had by the end of December overrun the provinces of Santa Clara and Matanzas and forced the Spaniards to busy themselves with the defense of Havana. During the first week in January the insurgents were operating within ten miles of that city and were overrunning Pinar del Rio, the westernmost province of the island. Besides recruiting men and gathering supplies, the Cuban leaders devoted themselves particularly to enforcing their decree that sugar grinding should not be carried on. They burned much cane and destroyed much machinery on estates which did not con-

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form to this decree. By the necessity of protecting these estates, and by the havoc made by the insurgents with the railway and telegraph lines, the Spanish commanders were greatly embarrassed in opposing the invaders. The latter pursued their accustomed tactics of avoiding a pitched battle, and, being now well mounted, they easily evaded the infantry columns of their enemies. On the 17th of January, in consequence of the dissatisfaction of the political leaders with the lenient policy of the captain-general, Martinez Campos was recalled. His successor, General Weyler, reached Havana February 10, and announced a more rigorous policy than that hitherto employed. Attributing the successes of the insurgents to aid and sympathy from the inhabitants of the inland regions, he issued a proclamation, February 17, authorizing summary proceedings against persons guilty of a long series of offenses, embracing practically every species of act, omission or expression favorable to the insurgents. Moreover, for the easternmost provinces he decreed a registration and passport system, which was later extended to the western provinces. Many arrests and executions under the operation of these decrees have been reported, and summary executions of members of the organized insurgent forces, on charges of pillage and arson, have taken place. By the middle of April Gen. Weyler had succeeded in establishing a *trocha*, or line of works, twenty-three miles long, across the narrow part of the island just west of Havana, and had concentrated here the bulk of his forces that were not engaged in garrison duty in the towns. This *trocha* separated the insurgent force under Maceo, in Pinar del Rio, from the main body under Gomez, which had returned eastward into Santa Clara. Fighting at various points along this line was reported at the close of this RECORD. — When in February the insurrection was a year old, Spain had sent altogether 117,000 men to Cuba, of whom about 4000 had died, chiefly from fever. The expense of the war had been about $50,000,000. At the end of this RECORD Gen. Weyler's total force amounted to about 130,000 men. That of the insurgents, under arms, was about 50,000. — The action of Congress in reference to the Cuban insurrection was the occasion of demonstrations against the United States in various Spanish towns during March. Riotous proceedings were indulged in by university students, and American consulates were assailed at Barcelona, Cadiz and elsewhere. The government temporarily closed the universities, and gave police and military protection to the consulates. Republican agitators appear to have played some part in the disturbances, but the popular feeling against the United States ran very high.

MINOR EUROPEAN STATES. — The policy to which the downfall, if not the assassination, of Stamboloff was a prelude, has been brought to its conclusion in the **reconciliation of Bulgaria to Russia.** The first decisive step, the baptism of the heir, Prince Boris, in the orthodox faith, was officially announced February 4. Prior to this, Prince Ferdinand had been engaged in overcoming the difficulties in the way of the infant's "conversion" — difficulties which consisted of the objections of the child's Roman Catho-

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lic mother and the refusal of the Pope to sanction the proceeding. Ultimately the mother absented herself from Sofia, and the Pope's attitude was disregarded. At the ceremony the Czar, in the person of one of his generals, officiated as sponsor. Meanwhile, the Sultan, doubtless under Russian influence, granted readily the demand that Prince Ferdinand be officially recognized as ruler of Bulgaria. All the powers signatory of the Treaty of Berlin promptly followed this example, and in March, amid general festivity, the princely court entered upon the regular forms of diplomatic intercourse with foreign governments. At the end of the month Prince Ferdinand visited Constantinople and received from the Sultan formal investiture as vassal prince. — In **Servia** the Skupshtina met November 27, and was notified in the royal address that a scheme for constitutional revision was contemplated. — A joint commission of fourteen for devising a plan for settling the questions in dispute between **Norway and Sweden** began its sessions at Stockholm in December.

THE ORIENT. — **Japan** reached a final adjustment of the Chinese war in November by bringing to a successful conclusion the military campaign that had been necessary to insure her occupation of Formosa. The natives of this island had refused to recognize Japanese authority, though China had formally ceded the island. On the 12th of December the Japanese forces evacuated Port Arthur, the conditions of the supplementary treaty having been fulfilled by China. The Japanese Parliament assembled December 28, with an encouraging outlook for legislation. Through agreement between the Liberal Party and the cabinet, it was understood that certain reforms in the way of freedom of speech and extension of the franchise should be conceded, and that the ministry would admit the necessity of resigning if it failed to retain the support of a majority in the Parliament. — In **China** vigorous measures of punishment for the recent outrages on Christians were carried through under the supervision of the powers. The American commission appointed to get redress for violence to missionaries at Chengtu traveled in impressive state for 1300 miles through the empire, and at the scene of the outrage saw the culprits properly punished. — The Corean capital has been the scene of disturbances that appear to reveal a conflict between Russia and Japan for the dominant influence. The reforms which the Japanese required in the administration excited considerable discontent both at court and among the people. In October the queen, who was practically at the head of the government, was murdered by a faction headed by the king's father and supported by the Japanese. On the 11th of February this faction in turn was overthrown by orders from the king, who had first taken refuge in the Russian embassy. The prime minister and other leaders were slain, and Russian influence was said to be firmly established. — Persistent rumors have circulated to the effect that China has granted Russia important railway and harbor concessions in Manchuria, but nothing authentic has come to light. — The Shah of Persia was assassinated, May 1, by a religious fanatic. Muzafer-ed-Din, son of the deceased, succeeded peaceably to the throne.

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AFRICA. — This continent has furnished, during the last six months, an unusually large number of important incidents. The affairs of the Transvaal are treated under another head (p. 381). At the other end of the continent the projects of **the Italians in Abyssinia** have met with a paralyzing reverse. The advance of General Baratieri's force southward, which was under headway at the close of the last RECORD, soon produced evidence that King Menelik had not been killed by lightning, as reported, but was confronting the Italians with a great army. Early in December an advanced column of the Italians was cut to pieces by the Abyssinians at Ambalagi, and shortly afterward the fortress of Makaleh was invested. On the 23d of January the Italian garrison, after a brave defense, were obliged to evacuate the town and retreat northward. Negotiations for peace proved futile, as Menelik demanded the entire withdrawal of the Italians from Abyssinian territory, and this was refused. After desultory fighting during February, General Baratieri, on March 1, made an attack in force on Menelik's army at Adowa, and was overwhelmingly defeated, with the loss of several thousand of men and all his artillery. The remnants of the Italian force retreated to Asmara, and relinquished nearly all the positions which they had occupied in the last two years, during their gradual advance into the Abyssinian province of Tigre. General Baldissera, who before the disaster had been designated to supersede Baratieri in command, entered again into negotiations with Menelik for peace, but failed to secure satisfactory terms from that monarch. Under the impulse of the home government's efforts to supply reënforcements and of Great Britain's aid, the Italians prepared to hold some of the positions that had been on the point of abandonment. In April King Menelik, with the bulk of his forces, withdrew into the southern provinces. — Ten days after the defeat of the Italians at Adowa, it was announced that an **Anglo-Egyptian expedition up the Nile** would at once advance from Wady Halfa, the southernmost town controlled by Egypt, toward New Dongola, in the Mahdist territory. The motive of this advance was found in threatening movements of the Dervishes at several points along the frontier, especially in the neighborhood of Kassala and of Suakin. The occupation of Kassala by the Italians (see this QUARTERLY, IX, 782) had been a serious blow to the Dervishes, who, it was thought, would now be encouraged by the recent defeat of the Italians to make serious efforts to recover it. A little friction among the European powers was developed in connection with the Dongola expedition (see above, p. 381). Late in March, however, the movement of the forces, 20,000 strong, began under the command of General Kitchener. Having attained the possession of Akasheh, about one-third of the distance to Dongola, without serious opposition, further advance was suspended while fortifications, railways and other prerequisites for larger operations were made serviceable. The Egyptian financial statement for 1895 showed a surplus revenue of £1,100,000, of which £412,000 was alloted to debt conversion, £363,000 to the reserve, and the remainder was left at the disposal of the

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government. Nubar Pasha resigned his position as prime minister, November 11, on account of advanced age. He was succeeded by Mustapha Fehmy Pasha. — The British expedition against Ashanti ended without bloodshed. Upon the approach of the troops to Coomassie, in the middle of January, King Prempeh announced his submission, and accepted all the British demands. He was sent to the coast as a prisoner, and his territory was all brought under British rule. An incident of the expedition was the death at sea of Prince Henry of Battenberg, of a fever contracted while accompanying the troops as a volunteer. — An uprising of the recently conquered Matabele took place at the end of March in the neighborhood of Buluwayo, and soon assumed serious dimensions. The disorganized condition of the South Africa Company's forces, due to the Jameson raid into the Transvaal, caused considerable difficulty in dealing with the rebels. Through the early part of April the murder of isolated settlers and the destruction of their property were reported from all directions. Some detachments of the native police joined the rebels, who by the end of the month had practically invested Buluwayo. British relief forces were set in motion from the Cape Colony, and troops were sent to that place from England, though the Boer government looked with much suspicion upon this proceeding. — Through a new treaty concluded January 18, Madagascar became fully a French possession, instead of a protectorate, as had been the effect of the original treaty. — The Congo State government agreed in November to pay an indemnity of 150,000 fr. for the execution of the British subject Stokes, who was irregularly condemned by the Congo officer, Major Lothaire (see last RECORD). The trial of Lothaire for murder in the Congo State resulted, however, in his acquittal.

LATIN AMERICAN STATES. — Great Britain's ultimatum to **Venezuela** in reference to the Uruan incident (see last RECORD, p. 756), was presented through the German legation at Caracas in November. No further information in respect to it has transpired, and the matter was said to have become merged in the negotiations for a general settlement in which the United States has been engaged with Great Britain since December. It was reported in March that Great Britain had consented to the proposition made by the United States, that the Uruan incident be divorced entirely from the boundary dispute and be settled independently. A revolutionary movement in Venezuela in December failed to develop much strength; but this was explained by the declaration of one of the leaders, that it was thought unpatriotic to embarrass the government while the boundary dispute with Great Britain was in a critical stage. — **Nicaragua** became the scene in February of a revolutionary uprising, based on the charge that President Zelaya was aiming at the dictatorship. Fighting was in progress throughout March and April, and Honduras sent troops into the disturbed state to aid Zelaya. By May 1 the insurgents had been driven from their last stronghold, the city of Leon, and peace was restored.

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